

## Fixed-Term Contract Policy

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| <b>Owned and maintained by:</b> | Human Resources |
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### Introduction and definition

A 'Fixed-Term employee' is defined as a person with a contract of employment that is due to end on the expiry of a specific term, on the completion of a particular task or on the occurrence or non-occurrence of a specific event.

There may be occasions where it is appropriate for Audit Scotland to recruit a fixed term employee. However, it is essential that we comply with legislation pertaining to fixed term employees. This document includes Audit Scotland's policy on fixed term employees, as well as procedures to follow to ensure compliance with legislation.

### Legislation

Under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, all fixed term employees have the right not to be treated less favourably than comparable permanent employees because they are fixed-term, unless the different treatment can be objectively justified. Less favourable treatment will be objectively justified if it can be shown that it is:

- to achieve a legitimate business objective
- necessary to achieve that objective
- an appropriate way to achieve that objective

A 'comparable employee' is someone who does the same or broadly similar work, and the comparator's skills and qualifications must be taken into account where they are relevant to the job.

'Less favourable treatment' can occur when a fixed-term employee does not get a benefit, whether it is contractual or not, that a comparable permanent employee gets, or is offered a benefit on less favourable terms. Managers must ensure Audit Scotland does not offer different terms – it will be very unlikely that differences can be justified, so check first with HR.

Expiration of a fixed-term contract without renewal under the same contract is a dismissal in law. Dismissal takes place when the fixed-term contract expires on the nominated termination date.

### Use of Fixed-Term Contracts

In the majority of cases, the rationale for making an appointment fixed term is due to the finite nature of the job and/or the funding linked to the job. However, in cases where it may be relatively easy to redeploy someone to another post elsewhere (e.g. a clerical or administrative post,

particularly those of a generalist nature), managers are urged to consider the appropriateness of making the appointment permanent at the outset. In the event that the job is discontinued, the post holder can be considered for redeployment to another post. In addition, managers should be aware that making an appointment fixed-term where it is not necessary, may result in a limited field of suitable applicants at the outset.

Fixed term employees are recruited with assistance from Human Resources (HR). Offers and contracts of employment are issued by HR, references obtained and medical information considered by our occupational health partners.

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

Fixed-term contracts may be extended or renewed for a variety of reasons, for example:

- The task is not yet completed
- Extension of time-limited external funding
- Other work has arisen for which the employee would be suitable (renewal)

The extension or renewal of a fixed-term contract can only be affected with the consent of the employee. The employer cannot insist on an extension or renewal. Once the relevant line manager has discussed the extension/renewal with the employee, HR will issue a letter confirming the arrangement.

In certain circumstances, continued renewal can result in the employee gaining recognition in employment law as a permanent employee. If fixed-term employees have their contracts renewed/extended or if they are re-engaged on a new fixed-term contract after four or more years of continuous employment, (i.e. under one contract lasting in excess of four years or under a contract which, taken with an immediately previous fixed-term contract, amounts to four years or longer in length) the renewal/extension or new contract becomes permanent. We must, therefore, consider carefully any proposal to extend an employee's fixed term contract up to 4 years' (continuous employment) as an employee may subsequently claim that they are being treated less favourably because they are not a permanent employee.

The only exceptions are when employment on a fixed-term contract can be objectively justified. The regulations state that in these circumstances, you must be able to demonstrate that the fixed term contract is necessary to achieve a legitimate aim. For example, to cover for another employee who is on maternity leave, sick leave or secondment. In this example, there is a legitimate need to provide cover and a pre-determined end date.

Please contact a member of the HR & OD team if you are considering renewing or extending a fixed term contract.

## **Procedure for ending a fixed term contract**

It is essential that managers adhere to the following structured approach when considering fixed-term contracts, as the employment law position requires the process to be followed. Therefore it is crucial that managers first liaise with Human Resources about a proposed non renewal of a fixed term contract, after which the following procedural steps must be followed.

For contracts of less than 11 months in duration, it may not be necessary to follow this process. Speak to Human Resources in the first instance for guidance.

Managers should aim to take a decision on the renewal or non-renewal of a fixed-term contract four months before the contract end date or, where this is not possible, at the earliest possible

juncture thereafter. This must also be discussed with HR.

1. The line manager should write to the employee to explain the reason(s) for the proposed non-renewal of the contract and invite them to a meeting to discuss the matter (see template letter 1). The employee may choose not to attend the meeting, in which case they should sign a letter detailing this (see template letter 2) and return it to their Manager. A copy of this letter should be sent to Human Resources. Possible reasons for non-renewal of the contract may include:
  - the requirement for specialist knowledge/expertise ceases to exist
  - end of a need for staff absence cover
  - end of a secondment/career development opportunity
  - changing or the end of staff resource requirements to meet business requirements
  - no foreseeable prospect of securing further funding.
2. The line manager of the fixed-term contract employee should hold a meeting at which the employee has the right to be accompanied by a trade union representative or a work colleague. At the meeting, the line manager will explain their intentions and reasons for the proposed non-renewal of the contract, and establish whether the employee is interested in exploring the scope for redeployment. Following the meeting, the manager should confirm the decision with Human Resources and they will then write to the employee confirming the decision. Where the decision is not to renew the fixed term contract, the employee must be advised of their right to appeal against the decision within 10 working days of receipt of the letter.
3. An employee who wishes to appeal against a decision not to renew their fixed-term contract must do so in writing to the manager who made the decision. The letter must specify the grounds of the appeal and a copy must be sent to Human Resources. The employee is then entitled to present their case accompanied by their representative, to a more senior manager not previously involved in the case. A letter will be sent to the employee confirming the arrangements for hearing the appeal.
4. The appeal hearing will normally be convened within 20 working days from receipt of the letter of appeal. Wherever possible, the appeal will be heard prior to the expiry date of the fixed term contract. Having heard the evidence, the manager appointed to attend the appeal shall have delegated authority to accept, amend or reject the original decision. The employee and their representative shall be notified of the decision in writing by the manager who attended the appeal, with a copy of the letter sent to HR.

## Redeployment

If an employee has expressed an interest in redeployment, the line manager must inform HR.

HR will write to the employee confirming that their employment will end on the expiry date of their fixed-term contract unless they have expressed an interest in being considered for redeployment and an offer of redeployment has been obtained prior to the expiry date of the fixed term contract. Attempts to secure redeployment will not continue beyond the expiry date of the fixed-term contract.

It is very important that any issues arising in relation to conduct or capability are properly considered during the fixed-term contract and dealt with under the appropriate procedures. It is not acceptable to wait for the end of the fixed-term contract to address the issues.

**Template 1:  
Invitation to attend a meeting to discuss proposed non-renewal of fixed term contract (to send 4 months in advance of expiry of FTC)**

Private and Confidential

Dear <Employee name>,

As you are aware, your fixed term contract as <job title> within <Group> is due to expire on <date>. At the present time, Audit Scotland does not foresee your contract being renewed because <reason – see guidance notes>.

I would like to invite you to attend a meeting to discuss the expiry of your contract. At this meeting we will discuss the above reason(s) for the termination of your contract and explore any alternative options available. You will also be given the opportunity to ask questions or raise any relevant issues. The final decision regarding your contract will take into account any representations you make at this meeting. You have the right to be accompanied by a trade union representative or work colleague.

If you wish to accept this invitation then I should be grateful if you would contact me by no later than <allow 3 weeks> so that we can arrange a mutually convenient time and place to meet. I do appreciate that you may have made alternative employment arrangements. If this is the case and you do not wish to attend this meeting, I would ask that you sign and return the enclosed letter to me by <date – allow 3 weeks>.

I look forward to hearing from you. If you have any queries please contact me on <tel no>.

Yours sincerely

<Manager name and signature>

cc Human Resources

**Template letter 2:**

**Letter from employee confirming non attendance at meeting to discuss expiry of contract.**

Private and Confidential

Dear <Manager>,

I refer to your letter regarding the expiry of my fixed term contract with Audit Scotland.

I understand that for the reasons set out in your letter, my fixed term contract is due to expire on <date> when, in the absence of any suitable alternative being found, my employment with Audit Scotland will terminate.

I confirm that I do not wish to take up your offer of a meeting as set out in your letter.

I accept that, on expiry, my fixed term contract of employment will not be renewed.

Yours sincerely

<Employee name and signature>

cc Human Resources