

Fixed-Term Contract Policy

Owned and maintained by:	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. An agency worker who has a contract of service with an employment agency is not regarded as a fixed term employee or worker. For further information relating to agency workers' rights, please refer to the Agency Workers policy.

Where the need for a particular job to be done is clearly temporary, the contract of employment offered will be for a fixed term. Fixed-term contracts will generally be offered where: it is known in advance that a particular job will come to an end on a specific date and when:

- the employment is for the purpose of completing a particular task;
- the employment is for the purpose of replacing an employee who is to be absent from work for a period of time (for example on maternity leave); or
- the post is dependent on external funding and it is thought likely that the funding will be available for only a temporary period of time.

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.

'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. In this instance, the same would apply to any issues arising in relation to conduct or capability. Any relevant Audit Scotland policy should be applied to a fixed term employee (unless expressly stated otherwise) the same way as it applies to a permanent staff member.

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.

Employees engaged on fixed-term contracts will be eligible to apply for permanent vacancies and informed of these vacancies as part of the communications issued by our internal comms team or

the hiring managers themselves via Yammer or SharePoint news items / access to the external careers website.

Use of Fixed-Term Contracts

Fixed term employees are recruited with assistance from the Human Resources & Organisational Development team (HR & OD). Offers and contracts of employment are issued by HR & OD, references obtained and medical information considered by our occupational health partners, in line with our Recruitment and Selection policy.

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 effected 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 may be deemed permanent.

The only exception is when employment on a fixed-term contract can be objectively justified.

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

Managers should aim to take a decision on the renewal or non-renewal of a fixed-term contract at least three months prior to 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 HR & OD. 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
 - changing or the end of staff resource requirements to meet business needs

- 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 HR & OD 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 HR & OD. 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 & OD.

Redeployment

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

Template 1:

Invitation to attend a meeting to discuss proposed non-renewal of fixed term contract (to send 3 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 <business 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 HR & OD team

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 HR & OD team