

Fixed Term Employees Model Procedure

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Contents

1.0	Introduction _____	3
2.0	Reasons for Fixed-term contracts – Objective justification _____	3
3.0	Recruitment and Selection _____	4
4.0	Contracts of Employment – Right not to be treated less favourably _____	5
5.0	Extension or Renewal of Fixed Term Contracts _____	6
6.0	Expiry of Fixed Term-Term Contracts _____	7
7.0	Termination of Fixed-Term contracts and redundancy _____	8
8.0	Appeals _____	8
9.0	A Head Teacher on a Fixed Term Contract _____	10
10.0	Trade Unions Officers _____	10

1.0 Introduction

1.1 The following procedures have been adopted by the Governing Body of _____ School to enable it to discharge its functions under the School Staffing (England) Regulations 2009 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 in relation to the employment of people on fixed-term contracts. They apply to everyone employed to work on this basis in the school by the governing body, or local authority as the case may be. They do not extend to workers provided and employed by employment businesses, in respect of whose services the school pays that employment business, or to school meals staff and other employees provided by the local authority acting in the role of an employment business.

1.2 These procedures deal with the recruitment of people to work on a fixed-term contract terms and conditions during their employment, and necessary action when the contract is due to expire. They are designed to give effect to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, which are not intended to prevent the use of temporary and fixed term contracts but to prevent abuse of them, and to that end include:

- Measures to prevent the abuse of successive fixed-term contracts. The total duration for the use of successive continuous contracts is limited to 4 years. Renewal of contracts beyond 4 years is otherwise deemed by law to become indefinite (permanent), unless there are circumstances in which it is possible objectively to justify using fixed-term contracts for a longer period.
- The rights of employees on fixed-term contracts to be informed of any vacancies and be given the same opportunity to secure a permanent job as a comparable permanent employee.
- The principle of non-discrimination and the right not to be treated less favourably than comparable 'permanent' employees. Employees have the right to ask their employers for a written explanation as to why they feel that they have been treated less favourably than their 'permanent' colleagues. The written explanation must be provided within 21 days. Employees are able to refer such matters to an Employment Tribunal.

1.3 The regulations define a fixed term employee as a person whose contract comes to an end either upon reaching a specific date or when a specified task has been completed or when a specified event does or does not occur.

1.4 The Governing Body and Head Teacher will seek advice from the authority where necessary. If a school insists on offering a fixed-term contract for inappropriate reasons the local authority reserves the right to require the governing body to meet the costs of any claims for unfair dismissal or redundancy on the expiry of the contract. The expiry and non-renewal of all fixed term contracts constitute a dismissal in law, whether or not an end date has been specified.

2.0 Reason for Fixed Term-Contact – Objective justification

2.1 Any fixed-term contract must be objectively justified and must be linked to specific reasons. The following are examples of reasons objectively justifying such a contract.

- to cover for absences of permanent staff due to sickness, attendance on training courses, maternity leave, etc.
- to provide extra help for seasonal variations in workload;

- to undertake duties of another employee temporarily allocated other duties within the school either as a specific task or while a more senior post is vacant or its occupant is absent (an arrangement commonly known as ‘back-filling’);
- to undertake a specific task, which has a foreseeable end;
- a predicted fall in pupil numbers, for which there is sound statistical evidence, leading to a need to reduce the number of employees in the school within the next twelve months;
- a known, severe budgetary deficit, leading to a need to reduce the number of employees in the school within the next twelve months;
- to provide additional education or undertake a specific project for which special funding has been obtained for a known, limited period;
- because the person is employed on the employment-based teacher training scheme;
- because the overseas trained teacher does not have qualified teacher status in England and is limited to employment as an overseas trained teacher for a maximum of four years from the date of first employment in that capacity in this country.

2.2 Reasons which would not be regarded as objective justification include

- Budgetary uncertainty - simple pessimism about the Government’s funding intentions for schools (however understandable) is not a sufficient reason.
- Possible future reductions in the number of pupils on roll – this is too uncertain – there must be valid statistical evidence within a known time-frame.
- Short-term needs of the school - this is too vague.
- To test the capability or performance of the employee - Statutory induction for newly qualified teachers provides for dismissal of a teacher who fails induction and for the local authority to meet the salary costs of such a teacher whilst that teacher is on reduced duties pending appeal. The same arguments apply to support staff on probation.

3.0 Recruitment and Selection

3.1 When the Governing Body identifies the need for additional staff, over and above the current approved staffing establishment of the school for a fixed-term period, it will establish the necessary additional posts as a temporary variation to its staffing structure in accordance with its normal procedures for varying that structure. A need for additional staff on a short-term basis may arise from, for example, the award of a special grant for additional educational provision.

3.2 When there is a need to recruit an additional employee in the absence of an employee who is part of the current, approved staffing establishment of the school the Governing Body, or the Head Teacher as the case may be, will make the necessary arrangements for recruitment and selection in accordance with the Governing Body’s delegations of its powers of recruitment and selection.

3.3 During the absence of an employee whose job carries extra responsibilities, those responsibilities may be undertaken by another existing employee (after internal advertisement within the school). There may also be occasions when an existing employee is asked to undertake a specific task and there is a need for that employee’s normal duties to be covered for the duration of that task. In such cases the

Governing Body or the Head Teacher as the case may be, may advertise for a person to undertake the normal duties of that other employee; this is commonly known as back-filling.

3.4 The Governing Body will apply its normal arrangements for recruitment and selection when recruiting fixed-term employees, having regard to the requirement to offer suitable alternative employment to such employees on the expiry of their contracts.

3.5 The advertisement for, details of, letter of appointment and statement of particulars for any job offered on a fixed-term basis must state the reason for the fixed-term contract.

4.0 Contracts of Employment – Right not to be treated less favourably

4.1 Contracts of employment must include the reason for the fixed-term contract and the date when it will end. In providing information to HR Services for Schools about a new appointment the school must specify the reason for the fixed-term contract. If an objective justification in the form of a specific reason is not given the local authority will issue an open-ended (commonly called ‘permanent’) contract of employment, which will mean that the contract continues until such time as the contract is terminated by resignation or by a dismissal for some reason.

4.2 Notice provisions will also be included to allow the contract to be terminated by either party before it is due to end and must specify the grounds which would cause early termination, as premature termination may result in a claim for damages for unpaid remuneration in respect of the rest of the contract. Unless the employee was dismissed for disciplinary, capability or other good reasons a school may face a claim for the balance of a fixed-term contract if it is decided to terminate the contract before the expiry date.

4.3 The Burgundy Book excludes teachers “employed on a temporary basis either for a period of one term or less or as substitutes for permanently appointed teachers absent for reasons such as secondment, prolonged illness or maternity” from most of its provisions, including notice periods, occupational sick pay and occupational maternity pay. However, the Burgundy Book pre-dates the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, so where possible the provisions of the Burgundy Book will be applied to teachers on fixed-term contracts. Notice of the termination of a fixed-term contract is effectively given in the offer of such a contract, but when the exact date of expiry is uncertain (as in the case of cover for an employee with a prolonged illness) then it may be that the exact date will not be known until a few weeks beforehand and may not coincide with the end of a school term. In such cases the normal notice periods cannot apply, but the school will give as much notice as possible. Occupational maternity leave and pay may not be possible, because of the condition that the employee must return to work for at least thirteen weeks (teachers) or twelve weeks (support staff) and the employee’s contract may not last long enough for the employee to fulfil that condition.

4.4 Otherwise terms and conditions of employment will be the same as for comparable open-ended appointments.

4.5 Employees on fixed-term contracts have the right to be informed of vacancies within the school or the authority in the same way as other comparable employees. Any vacancy in the school will be open to all employees, including those on fixed-term contracts, unless there is an internal re-organisation or re-structure affecting a specific group of staff who would otherwise be displaced.

4.6 Any selection for redundancy will not treat fixed-term employees more or less favourably than permanent employees.

4.7 Employees on fixed-term contracts should not be treated less favourably than permanent or comparable employees in respect of training opportunities, unless this can be objectively justified, for

example, if the training course lasts beyond the duration of the contract or there is not enough time for the employer to benefit from the employee's training.

4.8 In the event of an employee exercising the statutory right to ask for a written explanation of perceived less favourable treatment than fellow-employees with open-ended contracts the Head Teacher will reply on the Governing Body's behalf within 21 days.

5.0 Extension or Renewal of Fixed Term Contracts

5.1 This procedure provides for the extension or renewal of a fixed-term contract if

- an employee whose absence is being covered by a fixed-term contract delays his or her return beyond the date specified in the fixed-term contract, in which case the reason for the fixed-term nature of the contract remains the same and that fact will be stated in the letter of extension;
- the special work or project for which or circumstances in which the employee has been engaged on a fixed-term contract will continue for longer than originally planned, or the temporary funding has been extended, in which case the reason for the fixed-term nature of the contract remains the same and that fact will be stated in the letter of extension;
- new special work or a new project has been planned and the employee whose existing fixed-term contract is due to expire is suitably qualified or experienced for the new work or project, in which case the employee should be offered a new fixed-term contract specific to the new work or project;
- an employee whose absence is being covered by a fixed-term contract does not return and there is good reason for continuing fixed-term employment but for a different reason (for example, because another employee is absent, or to undertake duties of another employee temporarily acting up within the school pending the recruitment of a more senior employee). In this case the renewal will take the form of a new fixed-term contract with a new reason.

5.2 The Governing Body notes that if a person employed on a fixed-term contract is allowed to continue working without a formal extension beyond the date in the contract or without a new fixed-term contract with a different reason, then the employment will become open-ended (permanent) by default.

6.0 Expiry of Fixed-Term Contracts

6.1 The expiry of a fixed-term contract is a dismissal in law. The following procedures will apply.

6.2 Throughout the period of a fixed-term contract the head teacher will consider whether there are likely to be any suitable vacancies occurring in the school at or around the known or anticipated date of expiry which could be offered to the person employed on the fixed-term contract.

- If the employee has been undertaking the job of an absent employee who decides not to return (for whatever reason) the employee will be offered the job on a permanent basis.
- If the employee has been covering the job of another employee who has been temporarily undertaking other duties attached to a more senior, vacant post (acting up), an arrangement commonly known as 'back-filling'. then it may be considered that the employee does not have the suitable qualifications or experience for that senior, vacant post, but the head teacher will have regard to the possibility that this vacant post may be filled internally, thereby creating a new vacancy, probably at a less senior level, which might be suitable for the employee on a fixed-term contract.

6.3 At or around two to four months – depending on the notice period due to the employee - before the anticipated expiry of a fixed-term contract the head teacher will obtain a copy of the letter of appointment and contract of employment, ascertain whether the reasons given in the contract for making it fixed term are due to materialise, consider again whether any alternative employment is available or likely to become available in the school (having regard to the qualifications and experience of the employee), and remind the employee that the contract is due to expire.

6.4 The head teacher will write to the employee inviting him or her to a meeting with the head teacher to discuss the imminent expiry of the contract of employment. The letter (see Appendix 4) should include copies of any documents to be used at the meeting, remind the employee of the right to be accompanied and/or represented by a trade union official or fellow-employee and explain the procedures to be followed at the meeting. The employee should be asked to confirm that he/she will attend the meeting in person, to indicate whether he/she wishes to be accompanied by a representative and to provide any documentation at least five days before the meeting. A copy of the letter and any supporting papers should be enclosed for the employee's representative.

6.5 In order to ensure that the employee has enough time to prepare his or her response reasonable notice of the hearing should be given. This should be at least ten working days. It is helpful to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal notice to attend the meeting. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The head teacher may reject this suggestion but will do so only if it is unreasonable and will take advice from the Employee Relations Team on what is unreasonable. There is also the discretion to defer the date of the meeting by a longer period in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.

6.6 The employee shall be invited to provide any documentation at least five working days before the meeting. There is no requirement on the employee to submit any documentation.

6.7 The local authority does not expect to be notified of, or to attend, a hearing for confirmation of the expiry of a fixed-term contract. However, if a head teacher considers that there are exceptional circumstances requiring special support he or she may seek advice from the Employee Relations Team, which may then send a representative to the meeting.

6.8 The head teacher will consult the Employee Relations Team if the reason for the fixed-term contract is to undertake a specific project or task and the staffing establishment will be reduced on expiry of the contract, as a redundancy payment may be due in this event.

6.9 There may be cases in which an employee whose fixed-term contract is due to expire is simultaneously the subject of allegations being considered under one or more of the governing body's procedures for conduct or capability. Advice should be taken from the Employee Relations Team on such cases.

6.10 In the meeting the head teacher should confirm that the contract will expire for the reason provided in the contract of employment. If there is a suitable vacancy the head teacher will offer this to the employee and will make all the necessary arrangements for appointment to that post. If there is not a suitable vacancy, or the employee refuses the offer of further employment, the head teacher will explain that no other employment is available when the contract expires, but that the employee has the right of appeal to the appeal committee of the governing body. Should the employee submit that he or she has relevant experience or qualifications overlooked by the head teacher when considering suitable vacancies, then the head teacher may adjourn the meeting to reconsider whether there is a suitable vacancy in the school.

6.11 The head teacher will confirm the outcome of the meeting to the employee in writing. If no further employment is offered, the letter (see Appendix 4) will confirm that no further employment will be offered on the expiry of the contract, and state the right of appeal, including the requirement to give notice of appeal to the clerk to the governing body within ten working days of receipt of the letter, setting out the grounds of appeal.

7.0 Termination of Fixed-Term Contracts and Redundancy

7.1 The termination of some fixed-term contracts will be a redundancy. Circumstances in which a redundancy payment is due (provided that the employee has at least two years' continuous service in accordance with the Modification Order and provided that the employee does not obtain other employment covered by the Modification Order within four weeks of the expiry of the contract) may include the closure of a workplace, reduced need for employees and the cessation of a particular service or project (whether externally funded or not). When the employee has been employed during the absence of another employee, there is no reduction in work when the absent employee returns, so there is no redundancy.

7.2 Advice should be taken from the Employee Relations Team if there is a question over redundancy on the termination of a fixed-term contract.

8.0 Appeals

8.1 An employee on a fixed-term contract has the right of appeal against the expiry of the contract without an offer of further employment. An appeal shall be to the appeal committee established by the governing body.

8.2 An employee may appeal by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the governing body within ten working days of receiving written confirmation that the contract will expire without further employment. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. If the employee so wishes there is no requirement to submit any documentation, other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee or the employee's representative to this effect and the employee will not be able to use at the hearing any evidence not previously provided.

8.3 The clerk to the governing body will immediately notify the head teacher of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within seven working days.

8.4 The clerk to the governing body will then arrange an appeal committee hearing as quickly as possible, to take place, other than in exceptional circumstances, within twenty working days of the employee's notice of appeal. The clerk should make every effort to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal instruction to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or the employee's representative, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.

8.5 The clerk to the governing body will also seek advice from the employee relations team on the procedure for the appeal hearing, having regard to the grounds for the appeal, and shall then advise the employee and the other parties to the hearing of the appropriate procedure according to whether the appellant is seeking mitigation or is effectively asking for a re-hearing of the case in the light of the evidence. The formal notice of the hearing will include the procedure to be followed in the hearing, using either Appendix 1 or Appendix 2 (see 8.7 below).

8.6 The clerk to the committee shall give at least ten working days' formal notice of the hearing to all the participants, and in the same letter (see Appendix 4) shall set out the order of the proceedings, remind the employee of the employee's rights at the hearing, including the right to request to be accompanied by a representative of his or her choice who is either a union official or another of the employer's employees, list the members of the appeal committee, give the names of witnesses, and confirm the options for action which the appeal committee may take (see below). All documents relevant to an appeal hearing shall be enclosed with the letter. The witnesses may include, as appropriate to the circumstances of the case, the head teacher and/or a member of the committee which took the decision against which the employee is appealing, or the person who presented the case if that person was not the head teacher.

8.7 The normal procedure for an appeal hearing is set out in Appendix 1. If there is to be a re-hearing the procedure in Appendix 2 will be followed. The appeal committee will have regard to any guidance issued from time to time by the local authority on conducting a hearing (see Appendix 3)

8.8 The appeal committee may dismiss the appeal or uphold the appeal. If it upholds the appeal it may either offer the appellant a new contract of employment (for a different reason) or extend the current contract if there is good reason for an extension (for example, if special funding has been extended or the absence or the special work or project is lasting longer than anticipated).

8.9 The appellant may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral announcement shall be confirmed in writing by the clerk to the governing body within ten working days of the hearing (see Appendix 4).

8.10 The Head Teacher will take any necessary action to implement the Committee's decision.

9.0 A Head Teacher on a Fixed Term Contract

9.1 In the event of a head teacher being employed on a fixed-term contract this procedure shall be followed, with the chair of the governing body managing sections 1 to 6 of this procedure with advice from the Schools Support Manager and the Employee Relations Team as appropriate. This procedure will not apply to a deputy head teacher appointed by a governing body as acting head teacher in the same school, as the deputy head teacher has an open-ended, substantive contract in the school.

9.2 The governing body will follow the requirement of the School Staffing Regulations that it must advertise a vacant post of head teacher unless it has good reason not to and, in accordance with the statutory guidance accompanying the School Staffing Regulations, will consult the local authority (and diocesan authority as appropriate) if it considers that it has good reason not to advertise.

9.3 In the event of an appeal against a decision taken by the chair of the governing body in relation to a head teacher on a fixed-term contract the chair may present the case to the committee, or may ask the Schools Support Manager from the authority to present the case.

10.0 Trade Union Officers

10.1 Normal employment requirements should apply to trade union officers. However, dismissal of a trade union officer can be misconstrued as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior trade union representative.

[Back to Top](#)

Supporting Documents

[Model Procedure for Temporary and Fixed-Term Contracts](#)