

Policy on the Use of Fixed-Term Contracts

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Consultation via:	CJNCC

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HERIOT-WATT UNIVERSITY
Policy on the Use of Fixed Term Contracts

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1. INTRODUCTION

This policy aims to set out the University's position on the use of fixed term contracts and to ensure that such contracts are only used in circumstances that can be objectively justified. The purpose of this policy is to ensure that the University not only adheres to its legal responsibilities but also the responsibilities it has towards all employees irrespective of their contract type.

2. PURPOSE

The University aims to employ staff on an open ended basis in every appropriate circumstance. However, the nature of the University sector, its work and the funding that helps pay for the University's research and staffing costs does not always make this possible. Therefore, appointment of staff on a fixed term basis, in the first instance, will be appropriate should any of the reasons apply below.

- An identified and finite funding source (e.g. Research grant funding)
- A clearly specified task or project with a limited duration
- Cover for the absence of a member of staff (e.g. maternity leave, sabbatical)
- For an interim period (e.g. pending recruitment to a specific post)
- Where the student, or other business demand can be clearly demonstrated as particularly uncertain (e.g. fluctuating demand for courses or modules)

The rationale for appointing staff on fixed term contracts is that the circumstances that led to the post being created are temporary in nature and will end after a specified period of time.

3. OBJECTIVES

The University is committed to using fixed term contracts only where there are transparent and objective reasons and there is a genuine fixed term need. Where a post is being proposed as fixed-term rather than open-ended, managers must provide appropriate justification to Human Resources (HR).

Any member of staff on a fixed term contract will be entitled to terms and conditions of employment that are not less favourable, on a pro-rata basis, than the terms and conditions of a comparable employee on an open ended contract (unless there is an objective reason for offering different terms).

This means equal treatment in respect of pay & benefits and performance management, equal opportunities for promotion, training and further development, and equal access to occupational pension schemes.

Staff engaged on fixed-term contracts will be encouraged to apply for open-ended vacancies and will be informed of all available vacancies as they arise, via the all-staff email which is circulated on a weekly basis.

A first fixed term contract will not normally exceed three years in duration. In self-funded contracts (e.g. through Research Fellowships) an individual may be employed on a first contract which matches the duration of that funding

4. SCOPE

This policy and supporting procedures apply to all UK-based, fixed-term University employees. It does not apply to secondary appointments e.g. as Head of School.

Employees not based in the UK will normally have a separate policy and process due to differing Labour laws.

This policy does not form part of employees' contracts and may be amended from time to time.

4.1 The Expiry of Fixed Term Contracts

In law, when a fixed-term contract expires and is not renewed (or converted to open ended), it is considered to be a dismissal. Staff with the relevant service qualification have the right not to be unfairly dismissed: for staff recruited prior to 6 April 2012, this is 51 weeks; for staff recruited after this date, the service qualification is 1 year and 51 weeks. The arrangements for handling the expiry of a fixed term contract, in a fair manner, are covered in procedures document aligned with this policy.

A fixed term contract should only be terminated if there is no longer a requirement for that particular job to be done. Non-renewal of fixed term contracts must not be used as a substitute for good performance management and effective probationary procedures.

4.2 Expiry of Contract and Redundancy

The reason for the expiry of the fixed-term contract will depend on the circumstances of the case and will not always be redundancy. For example if the fixed-term employee had been covering for an absent open-ended member of staff (e.g. maternity cover) or if a secondary appointment has ended, then this would not be a redundancy.

However there may be occasions when the reason for the expiry is redundancy and on those occasions the University's Redundancy Selection Policy and Procedures should be followed. Further advice on specific cases should be sought from HR at the earliest opportunity.

If a School/Institute/Service has a number of employees who are employed in a similar capacity (whether fixed term or open ended) or a number of fixed term contracts due to expire at the same time, and there is a requirement only to retain some of the staff, the case must be referred to HR as soon as possible and before taking any action to end a contract.

Where a post is potentially identified as being "at risk of redundancy", the fixed term employee should not automatically be selected for redundancy purely because they are on a fixed term contract, unless this is objectively justified. It is possible that the employee on the fixed term contract is part of a larger "pool" of employees carrying out the same or similar role and that a selection process may need to be followed in order to ascertain who should be selected for redundancy. If this situation appears likely, the HR Partner will work with the Head of School/Institute/Service and in consultation with the employees and the recognised trade union representatives to ensure legislative compliance and best practice is followed.

The University will fully explore all methods of avoiding redundancy including alternative funding, redeployment and retraining options.

Where the reason for non-renewal of a fixed term contract is redundancy and the

employee has more than two complete years' service, the employee will be entitled to receive a redundancy payment in accordance with the provisions of the University's current Severance/Redundancy Payments policy.

4.3 Transfer to an Open Ended Contract

When a fixed term employee accrues 3 years' service he/she will normally be transferred to an open ended contract subject to:

- (i) there being at least 6 months' remaining on the contract or 6 months funding remaining
and
- (ii) there being no objective, justifiable business reason why an open ended contract cannot be offered

The University also abides by the legislation requiring fixed term staff who have more than 4 years' continuous service (except where this relates to a first contract) to be offered open ended contracts. However, there may be (limited) circumstances where the University can objectively justify the employee's continuing engagement on a fixed term basis.

When an employee is approaching the 3 year service date, or where 4 years' continuous service has been exceeded, HR will alert the Head of School/Institute/Service and consult with him/her before transferring an employee to an open ended contract.

Where a School/Institute/Service wish to transfer a fixed term employee to an open ended contract in circumstances other than described in above, then approval must be sought from the University's Vacancy Management Group.

4.4 Cessation of External Funding

Where an employee has been transferred to an open ended contract but remains in a post which is externally funded, the School/Institute/Service is responsible for monitoring the funding position of that post. At least 3 months before external funding is due to cease, the School/Institute/Service must alert HR so that appropriate action can be taken in line with the University's policies on Avoidance of Redundancy, Redeployment and Redundancy Selection.

5. LINES OF RESPONSIBILITY

Managers:

- are required to use fixed term contracts only where there is a genuine need and to provide appropriate justification of this to HR when taking action to fill a vacancy
- have a responsibility to ensure that when a fixed term contract is coming to an end the process is managed efficiently, fairly and with due care
- must seek advice from HR, at the earliest opportunity, when a fixed term post is deemed to be at risk of redundancy
- must hold the required consultation meetings with employees and confirm outcomes, in good time, as set out in the accompanying procedures

Employees:

- have a responsibility to explore alternative employment opportunities when their fixed term contract is coming to an end

Human Resources:

- will advise on the operation and application of this policy and associated procedure
- will take a proactive role in ensuring consistency of application across the University
- will alert managers, in good time, to impending expiries of fixed term contracts in accordance with the procedures

6. MONITORING AND EVALUATION

As part of this policy, an annual audit of the use of fixed term contracts across the University will be conducted and will include equality data. The results of this audit will be shared with the recognised Unions.

This policy and associated procedures will be reviewed by HR three years from the date of implementation or earlier if legislation dictates. Such amendments may be notified to employees through the normal communication channels and/or e-mail. The policy and procedure will be maintained on the HR website

<http://www.hw.ac.uk/services/human-resources/human-resources-policies.htm>

A record of all relevant documentation relating to individual cases must be passed to HR. These records will be kept confidential, monitored under equality legislation, and retained for a limited period in accordance with the Data Protection Act 1998 and the University's Records Retention policies.

7. RELATED POLICIES, PROCEDURES AND FURTHER REFERENCE

Policies

- Consultation on the Avoidance of Redundancy
- Redeployment Policy
- Redundancy Selection Policy

<http://www.hw.ac.uk/services/human-resources/human-resources-policies.htm>

Procedures

The procedures aligned to this policy can be found at

<http://www.hw.ac.uk/services/human-resources/human-resources-policies.htm>

8. DEFINITIONS

Redundancy

Redundancy occurs where

- the employer has ceased, or intends to cease, to carry on the business for the purpose of which the employee was employed; or
- the employer has ceased, or intends to cease, to carry on the business in the place

where the employee was so employed; or

- the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish; or
- the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

There is not a redundancy if the original job remains. For example, where an individual has been employed on a fixed term basis to cover the work of an existing employee (e.g. for long-term sickness, secondment, maternity leave), the fixed term employee is therefore not redundant at the end of his/her contract.

9. FURTHER HELP AND ADVICE

Human Resources: <http://www.hw.ac.uk/services/human-resources/about-us.htm>
for queries regarding this policy and procedure

10. POLICY VERSION AND HISTORY

Version No	Date of Approval	Approving Authority	Brief Description of Amendment
1.1	7 May 2013	Secretary's Board	This policy replaces the previous, separate policies on fixed term contracts

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