

MANAGER GUIDANCE

Managing Fixed Term Contracts



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Version History

Version	Date	Detail	Author
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Links and Dependencies

Fixed Term Policy: [Fixed term employees - Our Derbyshire](#)

Secondment Policy: [Secondment - Our Derbyshire](#)

Derbyshire County Council

Managers' Guidance on Fixed term Employees

CONTENTS

1. Introduction
2. What is the difference between a fixed term contract and a permanent contract?
3. What other options are available as an alternative to a fixed term contract?
4. Why recruit someone on a fixed term contract?
5. When do the regulations not apply?
6. How do I recruit someone onto a fixed term contract?
7. What if I recruit someone who already has a permanent contract?
8. How do I end a fixed term contract?
9. If the reason for dismissal is end of a fixed term contract with less than 2 years continuous service, what do I need to do?
10. If the reason for dismissal is some other substantial reason (SOSR) what do I need to do?
11. If the reason for dismissal is where an employee was employed on a fixed term contract for more than 2 years (or has continuous service) what do I need to do?
12. When should I make a fixed term contract into a permanent contract and how should I do this?
13. When should I issue an extension to a fixed term contract?

14. What if I want to end the fixed term contract early?

15. Useful Links/Contacts

1. Introduction

A fixed term contract is a 'limited term' contract. The contract can be limited by:

- time, that is the date on which the contract will end is specified within the contract.
or
- an event, for example upon completion of a specific project or upon the return of the substantive post holder.

It is important to understand the relevant legislation around employing people on a fixed term contract because even though the contract specifies the circumstances under which the contract will end, i.e. by stipulating a termination date or event, the termination of the contract and consequently the ending of the individual's employment will still be a dismissal.

2. What is the difference between a fixed term contract and a permanent contract?

A fixed term contract has a predetermined end date while a permanent contract does not have a set end date.

Fixed term contracts are typically used for specific projects, covering absences, etc. while permanent contracts offer ongoing employment.

Here is a more detailed breakdown:

Fixed term Contracts:

- Defined end date: The contract specifies a specific date on which it will end, or it may end upon completion of a specific task or project.
- Limited duration: They are inherently temporary designed for a specific period or purpose. The duration must be specified within the contract, and the contract will end on the date specified unless action is taken to extend/renew it.
- Common uses: Covering maternity leave, specific projects, long term absence, peaks in demand, etc.
- Potential for renewal: Fixed term contracts can be renewed, but this is not guaranteed, and the required process must be followed to obtain approval to extend/renew.
- Employee rights: Fixed term employees have the same basic employment rights as permanent employees including protection against unfair dismissal and redundancy pay after two years.

As not renewing a fixed term contract does amount to a dismissal, a fair process to terminate the employment must be followed.

Permanent Contracts:

- No set end date: The contract continues indefinitely until terminated by either party.
- Ongoing employment: Provides long-term job security.
- Employee rights: Permanent employees are entitled to the full range of statutory employment rights.

A permanent contract is ongoing and can only be brought to an end by the employer or employee due to a specific reason and by following a specific procedure as specified by legislation.

3. What other options are available as an alternative to a fixed term contract?

Alternatives to using a fixed term contract should always be considered. Some examples are listed below:

- Meeting the gap within the team

Where the gap in resources is unplanned, and will last less than 3 months, cover through existing resources should be considered in the first instance e.g. reallocating essential duties to other members of the team where appropriate, part time employees increasing hours or short term secondment arrangements enabling team members to temporarily undertake all or some of a more senior role ('acting up'). Managers should ensure that workloads across the team remain reasonable. Guidance can be [here](#) for instances where additional duties are being considered?

- Resources@Derbyshire

Where the gap cannot be met within the team short term Business Services support for up to 8 weeks can be provided by Resources@Derbyshire if this is appropriate.

- Internal secondments

For longer term cover requirements internal secondments should be encouraged for individual career development (see [Secondment - Our Derbyshire](#)). Permanent employees may apply for advertised fixed term vacancies on a secondment basis. Secondments are a temporary movement or 'loan' (for up to 2 years) of an employee to another part of the organisation. Management approval for a secondment is required, as the employee is entitled to return to their substantive post at the end of it.

Managers are encouraged to release employees for secondments, as this benefits both the employee and the organisation, e.g. providing a short term resource for specific projects, fluctuating service needs, maternity leave cover and staff shortages as well as enabling employees to gain enhanced skills, knowledge and confidence to support career development and succession planning, etc.

Where a manager is not able to agree a secondment, and an existing employee chooses to move from a permanent to a fixed term contract to undertake the work, the employee must be made aware of the implications of their contractual status changing from permanent to fixed term, and they will not have any entitlement to return to their substantive post at the end of the fixed term contract. The recruiting manager should also consider the employee's length of service and eligibility for a redundancy payment should the fixed term contract come to an end, and the potential cost implications of this.

4. Why recruit someone on a fixed term contract?

A fixed term contract should be used in circumstances where you only require someone for a defined period of time, and that period is longer than 3 months.

A fixed term contract would be appropriate in the following circumstances:

- to complete a particular task (e.g. project, temporary peak in workload, etc.)
- to cover a specific event (e.g. maternity leave, shared parental leave, secondment, long term ill health, career break, etc.)

- the funding for the post is due to end after a set period. NB: a post which relies on funding year on year and is likely to continue beyond 4 years should be appointed to on an established basis.

It is important when you are recruiting to a fixed term position that the reason for the fixed term nature of the employment is consistently understood and agreed by senior management. The reason should also be discussed with the applicant at interview and detailed in the contract. It is important because this will be the basis for ending the employment contract, at the end of its term.

It is also important to agree where the funding would come from to finance any redundancy payment, should one be required in the future. For example, if a partner organisation is funding a post, it must be determined whether they will also take responsibility for any redundancy payment that may be required if the funding is withdrawn or whether the employing department are liable for any redundancy costs.

It is important to note that there may be other costs associated with ending a fixed term contract. If the employee is a member of the Local Government Pension Scheme and has the relevant service when the contract ends, the employer is liable to pay pension shortfall costs for employees aged 55 and over, when the fixed term contract is ending by reason of redundancy.

5. When do the regulations not apply?

The Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002 stipulate that 'a fixed term employee has the right not to be treated less favourably than the employer treats a comparable permanent employee'.

These regulations do not apply to the following:

- Agency workers placed by a temporary work agency.
- Apprentices.
- Students on work experience placements of one year or less as part of a higher education course.
- Employees on government or European Community funded training or work experience schemes.

6. How do I recruit someone onto a fixed term contract?

When you wish to create, change or fill a position, whether it is brand new or a vacancy created by an employee leaving, you should follow the current process to get approval before doing so. More information on the process can be found on Our Derbyshire [here](#)

All fixed term vacancies should always be advertised and appointed to by following the Council's [Recruitment and selection procedure - Our Derbyshire](#).

7. What if I recruit someone who already has a permanent contract?

Normally, subject to manager's approval, the employee would be appointed to the fixed term role on a secondment basis. This means that they will be able to revert to their substantive role at the end of the fixed term contract. The employee should discuss this with their manager before applying for a fixed term vacancy.

The recruiting manager, the employee and their existing line manager will need to enter into a secondment agreement to agree to vary the individual's existing contract of employment to enable them to undertake the new duties. This agreement will also confirm that they will revert to their substantive role upon completion of the temporary role. For further information refer to the [Secondment - Our Derbyshire](#).

If the employee's substantive manager does not support a secondment arrangement, the employee would need to accept the offer of employment under a fixed term contract and resign from their current role. In these circumstances seek advice from HR before an offer is made as there may be entitlement to a redundancy payment at end of the fixed term contract if they have more than two years continuous service with the council.

If the substantive manager cannot agree a secondment arrangement, and the employee offers to resign and move from a permanent to fixed term contract, please seek advice on the risks and liability CST.HR.Operations@derbyshire.gov.uk before offering the employee a fixed term contract.

8. How do I end a fixed term contract?

HR Services circulate a spreadsheet to managers which contains a list of reminders for upcoming expiry dates relating to employees which includes fixed term contracts. To ensure that pay is correct please refer to the [Reminder of tasks guidance for managers - Our Derbyshire](#) and take the necessary action prior to the 'Date of Task' and at the latest by the 5th working day in the month.

When a fixed term contract ends it is a dismissal in law, and a fair process must be followed.

It is important that you determine the reason for bringing the contract to an end which defines the process that should be followed. The reason will usually be either:

End of fixed term contract (Redundancy) - employees on a fixed term contract with less than 2 years continuous service will have their employment terminated at the following times:

- The date on which the fixed term contract is due to expire, including the 'fair' reason for this.
- The event which the fixed term contract was aligned to has ended, e.g. someone returning to work after an absence which is being covered by the fixed term appointment.

If contracted as above employees should receive one month's notice that their contract will be ending.

Some other substantial reason (SOSR) will be the reason for the contract ending where:

- an employee has been employed on a fixed term contract for a particular job or project, and it has been made clear on appointment about the temporary nature of the post, and/or the substantive post holder has returned to work following a period of leave.

If contracted as above employees should receive one month's notice that their contract will be ending.

Redundancy as the reason for dismissal will apply where:

- an employee was employed on a fixed term contract for more than 2 years (or has continuous service) and the requirement for the work to be undertaken has diminished

or ceased e.g. project work dependent on external funding ends, once the funding ceases.

Where a fixed term contract ends due to redundancy, the Redundancy, Redeployment and Protection of Earnings Policy should be followed in the same way as it would for a permanent employee individually at risk of redundancy with employees been given 12 weeks' notice. However, if the end date is included in the originating contract, then the Council could be in a position to rely on this, although it would be good practice to issue a reminder at the point of 12 weeks so that the notice period is actually no longer than the given end date.

It is important that managers are proactive when ending a fixed term contract due to redundancy, given the extended notice requirements. The council do not want to have to extend posts where funding no longer exists to facilitate the provision of notice.

Whatever the reason for dismissal, a fair process must be followed.

9. If the reason for dismissal is end of a fixed term contract with less than 2 years continuous service, what do I need to do?

As a minimum:

- the employee must be informed of the dismissal including the reason the fixed term contract is not to be renewed.
- as a matter of good practice the employee should be reminded in good time that the contract is due to end to enable them to make representations if they wish.
- the employee must be given the opportunity to make representations against the failure to renew the contract at a meeting and must be given the opportunity to appeal against the decision to dismiss.
- The template letters [here](#) should be used to complete the steps above.

Where less than 2 years continuous service is held one months' notice must be provided to end the contract.

Managers are responsible for providing reasonable redeployment support for the employee. See the [Redundancy, redeployment and protection of earnings policy](#).

If you are ending a fixed term contract, you will also need to complete the leaver process on Fiori to notify HRS of the end date so that the payroll record can be closed.

10. If the reason for dismissal is some other substantial reason (SOSR) what do I need to do?

As a minimum:

- the employee must be informed of the reason for the dismissal, including the reason the fixed term contract is not to be renewed.
- as a matter of good practice, the employee should be reminded in good time that the contract is due to end to enable them to make representations if they wish.
- the employee must be given the opportunity to make representations against the failure to renew the contract at a meeting and must be given the opportunity to appeal against the decision to dismiss.
- The template letters [here](#) should be used to complete the steps above.

One months' notice must be provided to end the contract.

Managers are responsible for providing reasonable redeployment support to employees via the 121 process.

If you are ending a fixed term contract, you will also need to complete the leaver process on Fiori to notify HRS of the end date so that the payroll record can be closed.

11. If the reason for dismissal is redundancy, where an employee was employed on a fixed term contract for more than 2 years (or has 2 years or more continuous service) what do I need to do?

Refer to the [Redundancy, redeployment and protection of earnings](#) as in redundancy cases there are obligations for the council to:

- consult with those affected on an individual basis. It is best practice to provide a minimum of 30 days consultation.
- provide notice as set out in their contract of employment.
- The template letters [here](#) should be used to complete the steps above.
- provide redeployment support from 16 weeks prior to the proposed end date.
- provide a redundancy payment.
- provide the opportunity for the individual to appeal against the decision to dismiss.

As more than 2 years continuous service is held a minimum of 12 weeks' notice must be provided to end the contract. See note in Section 8.

If you are ending a fixed term contract, you will also need to complete the leaver process on Fiori to notify HRS of the end date so that the payroll record can be closed. HRS will notify pensions where applicable.

12. How do I convert a fixed term contract or employee into a permanent contract ?

Where a decision is made that a fixed term post is to become established, e.g. where an individual is not returning from a secondment and there is a need to fill their post on an established basis you should obtain approval through the [Resourcing approvals - Our Derbyshire process](#).

In terms of appointing to the post on an established basis there are different options available, and you should discuss these with your Resourcing Manager :

The options are:

- You could re-advertise the role as established, either internally or externally, and follow the [Recruitment and selection procedure - Our Derbyshire](#).
- You could slot/offer the employee currently in the role the now established role, as long as:
 - the employee was offered the fixed term contract through a competitive process, after recruitment in accordance with the council's normal recruitment and selection procedures. As a minimum the fixed term role should have been advertised internally.
 - the duties of the job have not significantly changed, and the grade is the same.
 - The individual fulfilling the role is not an agency worker or on a relief contract or on any other contract that classifies them as a 'worker' rather than an employee.
 - there are no employees at risk that should be considered for the role as a priority.

13. When should I issue an extension to a fixed term contract?

Extension/renewal of a fixed term contract must be justifiable. It must be clear whether the original reason for the fixed term contract still applies, or whether circumstances mean it has changed. For example if the original reason for the fixed term contract was a peak in demand within the team, but the extension is to cover a period of maternity leave within the same role and team.

The reason for the extension/renewal of the fixed term must be clear in the employee's contract. This will determine the reason for and process to follow when ending the contract. If the reason for the fixed term contract has changed, HRS need to be made aware so they can issue a new contract.

The employee currently employed under the contract should be offered the extension or renewal.

The successive renewal of fixed term contracts beyond four years should be avoided. Any employee on fixed-term contracts for 4 or more years will automatically become a permanent employee, unless the employer can show there is a good business reason not to do so.

You should discuss extensions as early as possible with your Resourcing Manager.

14. What if I want to end the fixed term contract early?

If the fixed term contract does not include a break clause, ending it early can be risky legally. Where there is no early termination clause in the contract, we cannot end it before the agreed end date unless:

- Agreement by both parties (with written confirmation)
- We apply the required notice period, so the termination is lawful
- There is a significant reason (e.g., gross misconduct) which would trigger immediate dismissal.

Always check the contract wording if you are considering ending a contract early to avoid a breach of contract. Consequences of a breach can give rise to wrongful dismissal claims and potentially unfair dismissal if the employee has sufficient service.

You can request copies of contract from HRS payroll teams (details in section 15). If you need more advice on ending a fixed term contract you can contact CST.HR.Operations@derbyshire.gov.uk

15. Useful Links and Contacts

Links

[Fixed term employees - Our Derbyshire](#)

[Reminder of tasks guidance for managers - Our Derbyshire](#)

[Resourcing approvals - Our Derbyshire](#)

[Secondment - Our Derbyshire](#)

Payroll

CST and place cst.placepayroll@derbyshire.gov.uk

Children's services cst.childrensservicespayroll@derbyshire.gov.uk

Adult social care and health cst.adultcarepayroll@derbyshire.gov.uk

HR Operations

Ending a fixed term contract and redeployment support

CST.HR.Operations@derbyshire.gov.uk

Resourcing Managers

Extending and converting to a permanent contract

CST and place: emma.jackson@derbyshire.gov.uk

Children's services lyndsey.coupe@derbyshire.gov.uk <mailto:>

Adult social care and health sandra.mccurrach@derbyshire.gov.uk

Vacancy Control

hr.vacancycontrol@derbyshire.gov.uk