

# **Joint Negotiating Committee for Higher Education Staff**

**Fixed-Term and Casual Employment  
Guidance for Higher Education Institutions**

**June 2002**

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# **Fixed-Term and Casual Employment**

## **Guidance for Higher Education Institutions**

### **PREAMBLE**

As part of the national negotiations that established the Joint Negotiating Committee for Higher Education Staff (JNCHES), concluded in June 2001, it was agreed to set up a joint working group on modernisation issues including those arising from the Bett Report<sup>1</sup>. One such matter concerns the number of staff in HE on fixed-term and casual contracts. The proposed Regulations on Fixed-Term Employees<sup>2</sup> which come into force on 1 October 2002 will require institutions to reduce significantly the current and future use of such contracts. Moreover, the Bett Report recommended that institutions review carefully the reasons for such contracts in order to limit their use. The JNCHES Modernisation Working Group has drawn up guidance on good practice on the use and management of fixed-term and casual employment to help HE institutions achieve such reductions effectively.

In considering the implementation of this Guidance, institutions are also strongly advised to consider the JNCHES Guidance on Equal Pay Reviews and the JNCHES Guidance on Role Analysis and Job Evaluation<sup>3</sup>. This will be necessary for implementing this guidance.

This guidance on fixed-term and casual employment has been jointly agreed between the UCEA and the nationally recognised trade unions and is recommended by JNCHES<sup>4</sup>.

### **PARTNERSHIP APPROACH**

UCEA and the nationally recognised unions recommend that HEIs identify measures to implement the required changes in partnership with the locally recognised unions.

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<sup>1</sup> The Report of the Independent Review of Higher Education Pay and Conditions June 1999

<sup>2</sup> The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

<sup>3</sup> The UCEA and the unions, with the exception of AUT, are parties to the JNCHES Guidance on Role Analysis and Job Evaluation.

<sup>4</sup> The nationally recognised unions are: Amicus, AUT, BDA, BMA, EIS-ULA, GMB, NATFHE, TGWU and UNISON

# **Fixed-Term and Casual Employment**

## **Guidance for Higher Education Institutions**

### **1. INTRODUCTION**

The proposed Regulations on Fixed-Term Employees<sup>2</sup> will come into force in the UK on 1 October 2002. The purpose of the legislation is:

- to protect employees engaged on fixed-term contracts from being treated less favourably than comparable employees on indefinite contracts
- to prevent the potential abuse of continuous use of fixed-term contracts by limiting the overall duration of a series of fixed-term contracts to 4 continuous years (after 1 October 2002) after which the contract automatically becomes indefinite unless there is a justifiable objective reason for it continuing as a fixed-term contract
- to ensure that employers inform fixed-term employees of vacancies within their organisation
- to provide for collective or workplace agreements with either a trade union or other worker representatives to modify the effect of the provisions regarding successive fixed-term contracts.

The impact of the Regulations will clearly be to reduce substantially the number of fixed-term contracts. This will apply to existing and new contracts. Institutions therefore need now to revise their existing arrangements to meet their legal obligations as well as reviewing existing procedures for indefinite staff to accommodate the working arrangements of those formerly on fixed-term contracts who become permanent. As the Bett Report<sup>1</sup> recognised, institutions will still need to retain sufficient flexibility to meet changes in funding and student demand resulting in the ending of particular research projects and courses. This will require greater management effort to redeploy staff to minimise the possible risk of redundancy. Institutions will require appropriate procedures to be in place to deal with this. Equally, the Report drew attention to real gains in the quality of recruitment, retention and performance and savings in costs.

### **2. PURPOSE**

This guidance is intended to apply to the full range of fixed-term and casual appointments including full-time, part-time, term-time, and hourly-paid posts and contract research staff (referred to collectively in this report as fixed-term and casual employment). Its purpose is:

- to provide guidance in implementing the legislation by reducing the existing number of fixed-term and casual posts and limiting their use in the future
- to encourage HE institutions to employ staff on indefinite contracts as the normal form of employment and to use fixed-term and casual contracts only where there are transparent, necessary and objective reasons for doing so

- to identify and assist the development of good practice in the use and management of fixed-term and casual employment.

Institutions are recommended to examine their own particular circumstances, which will vary according to their mission and available resources, and are recommended to identify in partnership with the locally recognised unions how the guidance will be implemented and how progress can be monitored.

### **3. THE HE EMPLOYMENT CONTEXT**

It is acknowledged that HE Institutions have to operate in a competitive environment. They depend on a range of funding sources, some of them variable and insecure. They need to make full use of modern and flexible work organisation and to adopt patterns of work that will fit challenges in the future. Just as important, they need to treat all their employees fairly and to offer opportunities for staff in all the occupational groups to pursue and develop their careers. As in other sectors of the economy, where funding can be similarly insecure, they should aim to ensure that the diverse arrangements for resourcing do not any more lead to an over-reliance on fixed-term and casual contracts or to disjointed Human Resource planning, with the contingent risk of losing expert staff (in all job categories) for whom there continues to be a valuable role. The aim must be to achieve a proper balance between flexible working and organisational efficiency, on the one hand, and security of employment and fair treatment of employees on the other.

As recommended by the Bett Report, proposals have been made to the Privy Council for approval of a revised Model Statute which, if approved, would result in the review of employment procedures for academic staff in pre-92 universities. This may help reduce the perceived need to rely on fixed-term contracts and encourage greater use of indefinite contracts.

### **4. THE LEGISLATIVE FRAMEWORK**

Where institutions continue to use fixed-term and casual employment in appropriate circumstances, they should be aware of a number of ways in which other employment legislation has a direct impact on this, as well as on indefinite employment, and they will need to put in place measures to meet those requirements.

Equal Pay Act 1970, Sex Discrimination Acts 1975 and 1986, Race Relations Act 1976, Race Relations (Amendment) Act 2000 and Disability Discrimination Act 1995

There is the requirement to avoid direct and indirect discrimination in the use of fixed-term and casual contracts and to ensure equal pay for work of equal value. These are set out in the legislation listed above. In addition, institutions are encouraged to apply the JNCHES Guidance on Equal Pay Reviews and on Role Analysis and Job Evaluation<sup>3</sup> issued in March 2002.

Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (as amended).

A part-time worker is defined as comparable to a full-timer if s/he works fewer hours, on the same or broadly similar work requiring a similar level of qualification, skills and experience. Where these criteria are met, the regulations provide that the part-timer should receive the same pro-rata contractual entitlements as a full-timer in proportion to the hours worked unless different treatment can be justified on objective grounds.

Employment Rights Act 1996

This includes statutory provision for providing employees with a statement of employment particulars (see Part I) and on the requirements to be applied where there is a redundancy (see Part XI).

The Trade Union and Labour Relations (Consolidation) Act 1992

Where redundancies are proposed, there is a requirement to provide information to and to consult with the recognised unions about ways of avoiding the dismissals or mitigating the consequences (see Part IV, Ch II).

## **5. SPECIFIC EMPLOYMENT GROUPS IN HE**

The new Regulations<sup>2</sup> will have a significant impact on the employment arrangements of all fixed-term staff in HE. It will particularly affect a number of employee groups distinctive to HE. It is acknowledged that institutions will need to devote a considerable level of staff and financial resources to implementing the legislation and that it can therefore only be done over time. These groups are discussed separately below.

Contract Research Staff

Contract research staff are a distinctive group of employees in HE, with a high proportion employed on fixed-term contracts. It is recognised that this has occurred in the past because of the short-term funding of these posts. However, it is also recognised that the Fixed-Term Employee Regulations<sup>2</sup> will require in a major overhaul of the way they are employed in the future, resulting in a significant transfer to and use of indefinite contracts. The ending of short-term funding will continue to raise the possibility of termination of these indefinite contracts. Where the research can be continued, all other appropriate sources of funding, both internal and external, need to be considered to replace the ending of the specific funding stream. Where this is not available, redeployment or other measures should be considered in order to render the redundancy procedures fair in accordance with the legislation. Institutions are recommended to have appropriate termination procedures in place and the resources to administer them, particularly since the reason for the termination is likely to be redundancy. These will include individual and collective consultation, redeployment and appropriate contractual notice. Progress has already been made in identifying, encouraging and disseminating best practice in all aspects

of career management for contract research staff. This arises from the Concordat agreed between HE institutions, the Research Councils, the British Academy and the Royal Society and the subsequent establishment of the Research Careers Initiative. The Concordat and the two RCI reports are available from the Universities UK website at [www.UniversitiesUK.ac.uk](http://www.UniversitiesUK.ac.uk) and are recommended to institutions.

### Fixed-Term Hourly-Paid Staff

Staff paid by hours worked (e.g. hourly paid teaching staff) also form a large and distinctive group particularly affected by the fixed-term legislation. Here also a high proportion is employed on fixed-term contracts. Again the implication of the legislation is that a significant number will transfer to indefinite contracts in accordance with the Fixed-Term Employees Regulations<sup>2</sup> described in paragraph 1 above. There may be a number who could continue to be employed on fixed-term contracts for justifiable reasons (see paragraph 9 below). Institutions need to give careful consideration to how this is achieved. In addition, the Part-time Workers Regulations and the legislation on equal pay and discrimination referred to in paragraph 4 above applies as described in (a) and (b) below. The JNCHES Guidance on Role Analysis and Job Evaluation<sup>3</sup> will help institutions in this task. In summary, the legal principles which need to be applied are:

- transfer to indefinite contracts on a full-time, fractional or hourly -paid basis as appropriate unless there is an objective reason justifying the renewal of the fixed-term
- equal pay for work of equal value comparing the work the employee is doing with similar jobs in the institution
- equal treatment in all aspects of employment regardless of gender, race or disability
- equal treatment in all aspects of employment between full-time and part-time staff doing the same or broadly similar work
- where a fixed-term contract is continued, equal treatment overall with staff on indefinite contracts doing the same or broadly similar work.

The effect of this transfer to indefinite contracts will be:

- (a) where the fixed-term post-holder is employed on the same or broadly similar work, covering the same or broadly similar range of duties as other comparable staff, they should transfer to an indefinite fractional contract working for all or part of the year
- (b) where the fixed-term post-holder continues to be employed on their existing duties, for which there is no comparable employee, they should transfer to an indefinite hourly-paid contract working for all or part of the year.

### Fixed-Term Term-Time Staff

Fixed-term term-time staff will also transfer to indefinite contracts in accordance with the legislation. Again, the Part-Time Workers Regulations and the JNCHES Guidance referred to above are equally important. This includes full-time and part-time staff who are required to work for part of the year only. Hence they will be entitled to the same benefits as a full-timer doing similar work pro-rated to the weekly

hours and to the part of the year worked. Where there is no equivalent work, the principle of equal pay for work of equal value will apply.

## **6. FLEXIBLE WORKING ARRANGEMENTS**

It should be noted that flexible working arrangements provide benefits for both the institution and the staff, particularly those with domestic responsibilities. These arrangements should continue to be used as appropriate within the requirements of the legislation.

## **7. PRINCIPLES UNDERLYING GOOD PRACTICE IN FIXED-TERM AND CASUAL EMPLOYMENT**

Fair and flexible employment arrangements should reflect the following principles:

- equality of opportunity is reflected in all aspects of employment
- indefinite contracts are the general form of employment relationship between employers and employees
- where the use of fixed-term and casual contracts is justifiable by objective reasons

staff on these contracts should be given:

- (i) the same opportunity as other staff to use services to assist better performance, such as staff development, training, appraisal, careers advice for research staff
- (ii) similar terms and conditions of employment to those in comparable jobs with indefinite employment in the institution unless the difference can be justified, in accordance with the legislation, for necessary and appropriate objective reasons
- (iii) information on, and the opportunity to apply for, more secure positions
- (iv) a regular review to consider, as appropriate, indefinite employment on full-time, fractional or hourly-paid contracts.

The successful application of these principles depends on recognition by institutions and staff that:

- staff - whether full-time, part-time, term-time or hourly-paid - should only be placed on fixed-term and casual contracts where this is justified by necessary and objective reasons
- there may be legitimate reasons for offering fixed-term and casual employment (see paragraph 9 below)
- indefinite employment will be available within an institution for only some of the staff on fixed-term and casual contracts
- staff employed on fixed-term and casual contracts have a legitimate expectation of the same support and services available to staff on indefinite contracts as appropriate
- staff employed on fixed-term and casual contracts may have special needs (e.g. career advice) relating to their short-term contracts
- there are benefits to the institution and the long-term career development of staff in transferring them, as appropriate, to indefinite contracts.

Institutions should consider proposals to implement these principles in partnership with the locally recognised unions.

## **8. EQUALITY AND FAIRNESS**

In achieving a proper balance between flexible and efficient working and fair and secure employment, particular attention needs to be given to avoiding unlawful discrimination. Statistical evidence suggests that a greater proportion of women and ethnic minorities are employed on fixed-term and casual contracts. It is important that institutions bear this in mind and review their use overall to ensure that the principle of non-discrimination is applied rigorously. The JNCHES Guidance on equal pay reviews provides practical advice.

## **9. OBJECTIVE REASONS FOR FIXED-TERM AND CASUAL CONTRACTS**

It is essential that there are transparent, necessary and objective reasons for placing a post initially and subsequently on a fixed-term or casual contract. The renewal or extension of the fixed-term would also have to be justified separately by objective reasons. The list below includes some examples. Institutions are recommended to identify in partnership with the locally recognised unions the circumstances in which they - in light of their own individual requirements - would use fixed-term and casual contracts.

Within the context set out above, examples of necessary and objective reasons or circumstances could include:

- (a) the post requires specialist expertise or recent experience not already available within the institution in the short term
- (b) to cover staff absence as appropriate (e.g. parental and adoptive leave, long-term sickness, sabbatical leave or secondment)
- (c) the contract is to provide a secondment or career development opportunity
- (d) input from specialist practitioners
- (e) where the student or other business demand can be clearly demonstrated as particularly uncertain
- (f) where there is no reasonably foreseeable prospect of short-term funding being renewed nor other external or internal funding being available or becoming available. Where the short-term funding has already been renewed, continuing use of the fixed-term contract would need to be justified by objective reasons.

## **10. MANAGEMENT OF FIXED-TERM AND CASUAL CONTRACTS**

It is important that Heads of Departments and grant-holders, responsible under devolved arrangements for budgeting and appointments, are fully informed about institutional policies and procedures, particularly in regard to recruitment and promotion, and that these are followed. As part of their day-to-day management, institutions should ensure that fixed-term and casual employees are given:



- a statement of their terms and conditions of employment, in accordance with statutory requirements
- information on, and the opportunity to apply for, vacancies in the same way as other staff
- appropriate opportunities to enhance skills and career development
- a periodic review to consider whether indefinite employment is appropriate.
- on request, a written statement within 21 days explaining (a) any differences in their employment arrangements from those of comparable permanent employees taking into account the overall remuneration package or (b) after 4 years continuous service, whether the contract is indefinite or the objective reasons for continuing the fixed-term employment.

The legislation proposes to remove the use of redundancy waiver clauses from 1 October 2002.

## **11. TERMINATION OF A FIXED-TERM CONTRACT**

The procedure for terminating a fixed-term contract should, wherever possible, include the following components:

- up to four months before expiry of the contract, all the alternative options should be considered e.g. renewal, redeployment etc.
- up to three months before the expiry date, consultation should take place with the postholder on the prospects for alternative options, taking account of the postholder's aspirations
- the postholder should be given information about other positions in the institution
- where the expiry of the contract is a redundancy, consultation should take place with the recognised union(s) in accordance with statutory requirements
- further consultation should take place with the recognised union(s) and the postholder as required.

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