

## Guidance on Contractual Provisions

<b>Version Number</b>	1
<b>Location</b>	Guidance for Schools Volume 1 Section 6
<b>Author</b>	HR Advisory – Support Services for Education (SSE)
<b>Published</b>	September 2016
<b>SSE Review Date</b>	September 2018
<b>Effective Date</b>	Formal Adoption by school
<b>Consultation</b>	This Guidance has been shared with recognised schools trade unions.

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## 1. **Introduction**

This guidance has been produced for Headteachers and School Business Managers to assist them in determining the most appropriate type of employment contract to be issued to staff on appointment and how to manage these contracts throughout the employment relationship.

It also provides, through a combination of statutory guidance and best practice, useful information to Headteachers and School Business Managers, regarding the deployment and management of staff and signposts to relevant documents.

## 2. **Contracts of Employment**

Where Governors or the Headteacher make any offer of employment, verbal or written, without any pre-conditions to a candidate/existing employee and that offer is accepted, a contract exists between two parties. If Governors/ Headteacher then renege on that contract they may face a claim for damages before a civil court.

Where the Governors/Headteachers make an offer subject to specific Conditions, e.g. satisfactory pre-employment checks and such conditions are not met, they should have a defence for any claim for breach of contract should they decide to withdraw the offer of employment or in the case where an individual has started in post, terminate the contract of employment.

### 2.1 **Statements of Particulars**

2.1.1 An individual employed for more than one month is entitled by law to receive, by the end of the second month, a written statement of terms and conditions of employment – these should be issued by the school's payroll provider.

### 2.2 **Employment Contracts**

2.2.1 Part-time employees, irrespective of number of hours worked, enjoy the same employment protection as full time employees.

2.2.2 The terms and conditions of service included in contracts of employment are determined by Governing Bodies and must be consistent with employment law, statutory rules and regulations and nationally and locally negotiated conditions of service. Within these constraints, Governors can tailor a contract to meet the School's requirements, for example:

- Start date.
- Finish date.
- Grade of post (for LA maintained schools this must be consistent with nationally or locally agreed scales).
- Starting salary (for LA maintained schools this must be consistent with nationally or locally agreed scales).
- Weekly hours.
- Weeks of employment (i.e. all year round or term time only).
- Type of contract (permanent, fixed term, open ended linked to funding).

2.2.3 The length of an employee's continuous employment determines statutory rights as follows:

Minimum length of continuous service	Statutory rights to
4 weeks	minimum period of notice
1 month	written Statement of Terms and Conditions of Employment
2 years	written statement of reason for dismissal
2 years	protection from unfair dismissal
2 years	redundancy payment
2 years	time off to look for work if under redundancy notice
none	maternity leave; time off for pre-natal visits; return to work after confinement
none	protection against dismissal for trade union activities
none	time off for trade union activities
none	protection against discrimination

Please see [Appendix 5](#) for further information regarding Academies and impact of continuous service when changing employer.

2.2.4 The statutory notice provisions require that an employee who has worked more than 4 weeks but less than 2 years must receive 1 week's notice of the termination of employment. Thereafter an employee will be entitled by statute to 1 week's notice for every year's service up to a maximum of 12 weeks' notice.

2.2.5 These are the minimum requirements under statute, however, they may be over ridden by contractual notice provisions e.g. in the case of teachers. See [Appendix 1](#) for guidance on contractual start and finish dates for teaching staff).

2.2.6 The minimum notice an employee is required to give the employer is 1 week under statutory provisions but a longer period is often defined in the contract. In some circumstances an employee will wish to curtail the notice period, however, if the employer is not prepared to agree to this the individual would be deemed to be in breach of contract if they do not honour their contractual notice period.

## 2.3 **Types of Contracts**

2.3.1 **Permanent Contract:** A permanent contract is only permanent in the sense that neither the employer or employee knows at the start how long it will last.

2.3.2 **Fixed Term Contract:** A fixed term contract (FTC) is one where there is a definite end date known by the employer at the time the contract is offered and a specific reason given for the contract (e.g. funding, restructuring, maternity cover). Please see [Appendix 2](#) on the management of FTC.

2.3.3 **Flexible Contract:** Where schools have a need for a minimum level of provision, but that requirement is likely to go up and down each year dependent on the needs of individual students it may be more appropriate to have a flexible hours contract rather than a fixed-term contract (for example SEN LSA's). Below is the wording that could be used in the contract.

*“The school reserves the right to require the employee to change their hours of work to meet the operational requirements of the school. The employee will be guaranteed a minimum of [ ] working hours and will not be required to work any more than a maximum of [ ] working hours per week. Notification will normally be given in July of any changes due to be implemented from September. However, the school also reserves the right to make changes at other times during the school year with reasonable notice. It is a condition of the employee's contract that he/she agrees to any changes, if requested to do so by the school.*

*Under the Working Time Regulations 1998 the employee will not be expected to work more than an average of 48 hours per week.”*

It should be noted that use of these contracts should be fair and reasonable in all the circumstances, and so the “range” between the minimum and maximum should not be overly large (for example 3 hours to 37 hours), but should be wide enough to meet the schools reasonable needs.

2.3.4 **Open Ended Contract:** These are where the termination of the contract is decided by a future event where the actual date cannot be predicted (e.g. contract linked to pupil with SEN funding). Dependant on the reason for the contract it may be possible for schools to increase/decrease the contracted hours to meet the operational needs without the requirement to issue a new contract or invoke redundancy procedures.

2.3.5 **Zero Hours Contract:** Zero hours contracts can be used to provide a flexible workforce to meet a temporary or changeable need for staff.

A zero hours contract is an employment contract with mutuality of obligation. This means that under the contract the employer does not undertake to provide any work at all but is under an obligation to offer work if there is work available. Under the contract, the employee is under an obligation to be available for work and to accept the work subject to a minimum notice period being given.

The employer will pay only for work actually done. Employees on zero hours contracts accrue the same full statutory and contractual employment rights

(e.g. Annual Leave, Sick Pay, Maternity, Paternity and Adoption) in the same way as any permanent employee. However, the variability of work assignments means they are not always eligible to receive statutory and contractual payments.

2.3.6 You may employ a person to work at the school who will assert they are self-employed and should be paid for their services via submission of invoices rather than via the payroll system. To ensure the employer fulfils its legal obligations for deducting tax and NI contributions, it is essential any person claiming self-employment is assessed against HMRC criteria. Schools are advised to check the status of an individual via their payroll provider. The onus and the liability for ensuring these checks are undertaken rests with the Employer.

2.3.7 **Agency Staff:** These are individuals who are supplied to work for and under the supervision of a person ("the hirer"). A "hirer" will have its own legal identity and is responsible for supervising and directing the agency worker while they undertake the assignment. The question of who is the hirer is a matter of fact to be determined in the light of the circumstances of each case.

In foundation schools, voluntary aided schools and foundation special schools, the "hirer" is the school's Governing Body, being the legal entity to whom the worker is supplied and who is responsible for the supervision and direction of that worker.

In community schools, voluntary controlled schools, community special schools and maintained nursery schools, the "hirer" is *either* the Local Authority *or* the school's Governing Body. It is a matter of fact to be determined in each case and depends on to whom the worker is supplied and who supervises and directs that person's work.

An agency supply teacher *can* move between schools where the same Local Authority is the hirer without stopping the clock on the qualifying period *unless* it is a substantively different role. If an agency supply teacher moves to a school where a different Local Authority or a different Governing Body is the hirer, the qualifying clock resets to zero.

In a circumstance where the Local Authority plays no part in obtaining the agency supply teacher or in supervising their work it seems reasonable to identify the individual school as the "hirer" and therefore regard each assignment as a separate hire for which the 12 week qualifying period must be separately served.

**Please note supply teachers appointed via the LA Supply Register are not agency workers but classified as casual staff.**

## 2.4 **Variation of Contracts**

2.4.1 It is always open to Headteachers/Governors to seek to vary a contract provided:

- there is a genuine business justification for doing so;.
- the selection of individual employees for such variations is made fairly;

- full consultation takes place with the employee and his/ her representative;
- due notice of the change is given.

**Before beginning a process which could result in a change of contract, Headteachers should contact their HR Adviser for advice and guidance.**

2.4.2 Where agreement is reached details of the change(s) should be notified to the school payroll provider who will then issue an appropriate amendment to the employee's Statement of Particulars.

2.4.3 If agreement cannot be secured, the change cannot be imposed unilaterally. Headteachers/Governors do have the option of effecting dismissal procedures in respect of the existing contract and offering continuous employment on a new contract which includes the variation(s) in terms and conditions (this is known as dismissal and re-engagement). This should only be considered in exceptional circumstances.

## 2.5 **Termination of Contracts**

2.5.1 Permanent contracts and zero hours contracts can only be terminated by either side giving the appropriate notice. However, the employer may give notice if 1 of the 5 fair reasons applies these being, dismissal, capability, conduct, redundancy, illegality or some other substantial reason.

2.5.2 The expiry of a fixed term contract without renewal is, in law, equivalent to a dismissal. This means that an employee whose fixed term contract is not renewed has exactly the same employment protection rights as a permanent employee who has been given notice. Consequently an employee could make an unfair dismissal claim (if they have more than 2 year's continuous service).

2.5.3 If the employer decides unilaterally to terminate a fixed term contract before the date or event stated in the contract, this can only be achieved for a fair and lawful reason i.e. conduct, capability (professional and ill health), redundancy, failure to comply with a legal enactment or some other substantial reason. Additionally in such cases, the employer is required to have followed a fair procedure. Therefore, fixed term employees should not be selected, for example, for redundancy due to budget cuts simply because they are on a fixed term contract, nor can poor performance or conduct be used as a reason for non-renewal as the appropriate policies and procedures should be applied.

2.5.4 **Schools are advised to contact their designated HR Adviser prior to taking any action regarding the termination of a contract of employment.**

## 3. **Pay and Conditions of Employment**

3.1 Teachers terms and conditions of employment are governed by a national collective agreement known as "The Burgundy Book" and the statutory provisions of the School Teachers Pay & Conditions Document (STP&CD). These documents can be access via Guidance for schools volume 1.

- 3.2 Academies have discretion as to how they determine pay arrangements for their staff but to date most, if not all Somerset Academies appear to have continued to apply the provisions of the School Teachers' Pay and Conditions Document for both existing staff and those appointed post transfer.
- 3.3 Support staff terms and conditions are governed by the national collective agreement known as "The Green Book". Following the implementation of the Single Status Agreement, the Local Authority operates a Job Evaluation Scheme under which all roles within schools have been subject to a job evaluation process and assigned a salary grade commensurate with the roles and responsibilities of the post. Schools are advised to contact the HR Advisory Service should they require further information regarding the Job Evaluation Scheme.
- 3.4 For support staff, the Governing Body is required to fulfil its obligations under the National Joint Council for Local Government Services National Agreement on Pay and Conditions of Service (Green Book) and local agreements between Somerset County Council/Academy Trust and the recognised trades unions.
- 3.5 Headteachers and Governing Bodies are advised to appoint support staff to the Local Authority evaluated grade as set out in the Local Authority model Pay Policy (see Guidance for Schools, Section 5a, Appendix 7 for further information).

#### 4. **Consultation with Staff & Professional Associations**

- 4.1 The Headteacher, in carrying out their duties, is required to consult where appropriate with the Local Authority, Governing Body, staff of the school, professional association representatives and other persons on the school staff. Headteachers are advised to establish procedures that provide for consultation on specific topics or have regular consultation meetings.
- 4.2 It is recommended the consultation process, where appropriate, should involve, at the initial stages of any change programme and prior to any full staff meeting, representatives of the professional associations in the school. These representations will provide a 2 way communication link between the Headteacher and staff who are members of such associations and should prevent conflict situations arising.
- 4.3 Consultation procedures should not prevent the Headteacher from managing the school. Staff and professional associations have the right to be consulted and express their views, however, the Headteacher/Governing Body has the right to decide action to be taken.

#### 5. **Management of Staff**

- 5.1 The Headteacher is responsible for deploying and managing all staff within the school and allocating duties to them in a manner consistent with their conditions of employment.

- 5.2 A teacher employed full time, other than in a residential establishment, shall be available for work 195 days in any year, of which 190 days shall be days on which they may be required to teach pupils in addition to carrying out other duties. The 195 days shall be specified by the employer. Section 2 of the STP&CD provides information regarding working time for teachers (working time provisions within the STP&CD do not apply to Headteachers, Deputy Headteachers, Assistant Headteachers or teachers on the pay range for Leading Practitioners).
- 5.3 A full time teacher shall be available for work as specified by the Headteacher for 1265 hours, to be allocated reasonably throughout the 195 days on which they are required to work. Time spent travelling to and from work does not count towards the 1265 hours.
- 5.4 Part-time teachers cannot be required to work on a non-working day. Attendance at INSET days should be based on the pro-rata principle and if attendance at such meetings falls on a non-working day, by agreement the employee should be either granted time off in lieu (TOIL) or paid the additional hours.
- 5.5 STP&CD provides detailed guidance regarding pay for part-time teachers and information on calculating working time for part-time teachers.
- 5.6 Teachers employed on a day to day basis or other short notice basis (supply teacher) must be paid in accordance with the provisions of the STP&CD on a daily basis calculated on the assumption that a full working year consists of 195 days. Any periods of employment of less than a day should be calculated on a pro-rata basis and based on an academic year of 195 days, a supply teacher may be paid up to 6 hours 29 minutes per day (1265 /195).
- 5.7 It is advised if a teacher is likely to be employed for a term or more they should be appointed on a fixed term contract rather than being employed on a supply basis.

## 6. **Cover for teacher absence in schools (Rarely Cover)**

- 6.1 Schools are required to ensure that teachers and Headteachers may be required to cover only rarely, in circumstances which are not foreseeable (**“rarely” cover does not mean “never”**). This applies to all teachers including those on the leadership spine, those employed on permanent, fixed term or part-time contracts. The only exceptions are teachers who are employed wholly or mainly to undertake cover.
- 6.2 The guaranteed PPA time of a teacher forms part of the legal conditions of employment and cannot be used for cover. Please see [Appendix 3](#) for PPA Guidance.
- 6.3 In addition to supply teachers, schools may choose to cover absent teachers by using Cover Supervisors or deploying support staff to undertake “specified work”. Specified work would cover the following activities:
- Planning and preparing lessons and courses for pupils.
  - Delivering lessons to pupils (this could include virtual classroom work).

- Assessment and reporting on progress & attainment of pupils.
- 6.4 Within the Education (Specified Work) (England) Regulations 2012, staff assigned to carry out specified work fall within 3 broad categories:
- Qualified teachers (provided they are registered with the DfE).
  - Teachers without QTS (e.g. trainee teachers, instructors and overseas trained teachers).
  - Those staff the Headteacher is satisfied has the skills, expertise and experience required to carry out specified work. Staff assigned to this type of work would usually meet the Higher Level Teaching Assistant Standards (HLTA).
- 6.5 Staff undertaking specified work should be remunerated appropriately for this work – please see [Appendix 4](#) for further guidance.

**START AND FINISH DATES FOR TEACHERS AND SUPPORT STAFF  
EMPLOYED UNDER CONTRACT (not supply or casual staff)**

These start and finish dates comply with national and local conditions of service for teachers and support staff. The staff have been grouped as follows:-

1. Permanently Employed Teachers.
2. Teachers Employed on a Fixed Term Contract.
3. Support Staff Employed All Year Round on a Permanent or Fixed Term Contract.
4. Support Staff Working Term-Time Only on a Permanent or Fixed Term Contract.

Note: For part-time employees the start and finish dates at the beginning or end of a school term will still apply, even though their actual start and finish dates may not coincide with the first or final day of a school term.

1. **Permanently Employed Teachers**

**Start Date**

- 1.1 If the first day of work for a part-time employee is the beginning of a school term, the start date will be 1<sup>st</sup> September, 1<sup>st</sup> January or the first day after the end of the Easter holidays.
- 1.2 If the first day of work is not at the beginning of a school term, the start date will be the first day worked.

**Finish Dates**

- 1.3 If the last day of work is the end of a school term, the finish date will be 31<sup>st</sup> December, the last day of the Easter holidays (if transferring to another teaching post) or 30<sup>th</sup> April (if not transferring to another teaching post), or 31<sup>st</sup> August.
- 1.4 If the last day of work is the end of a half term, the finish date will be the last day of the half term holiday i.e. the calendar day before the date of the commencement of the new half term e.g. a Sunday.
- 1.5 If the last day of work is not at the end of a full term or half term, the finish date will be the last day worked. (If this is a Friday and the employee starts work on the following Monday with Somerset County Council or another Local Authority, the final date should be the Sunday).

2. **Teachers Employed on a Fixed Term Contract (does not apply to  
Maternity Cover or Long Term Sickness Absence Cover – see 2.4)**

- 2.1 Contracts which are fixed term for one or more full school terms must have one of the following start/finish dates:-
  - 1<sup>st</sup> September to 31<sup>st</sup> December or to last day of Easter holidays or to 31<sup>st</sup> August.

- 1<sup>st</sup> January to last day of Easter holidays or 31<sup>st</sup> August or 31<sup>st</sup> December.
- First school day of Summer Term to 31<sup>st</sup> August or 31<sup>st</sup> December or last day of Easter holidays.

## 2.2 Contracts which:

- are fixed term;
- begin at the start of a school term; and
- are longer than a full term but end part way through a subsequent term, will have one of the following start/finish dates:-

- 1<sup>st</sup> September to last working day (or if finishing at the end of a half term) until the last day of the half term holiday i.e. the calendar day before the date of the commencement of the new half term e.g. a Sunday.
- 1<sup>st</sup> January to last working day (or if finishing at the end of a half term until) the last day of the half term holiday i.e. the calendar day before the date of the commencement of the new half term e.g. a Sunday.
- First school day of Summer Term to last working day (or if finishing at the end of a half term) until the last day of the half term holiday i.e. the calendar day before the date of the commencement of the new half term e.g. a Sunday.

## 2.3 Contracts which are fixed term for less than one school term, or start part way through a term and finish part way through a subsequent term, will have the start/finish dates as follows:-

- If the first day of work is the beginning of a school term, the start date will be 1<sup>st</sup> September, 1<sup>st</sup> January or the first school day of the Summer Term.
- If the first day of work is not at the beginning of a school term, the start date will be the first school day worked.
- The finish date will usually be the last school day worked. (If this is a Friday and the employee starts work on the following Monday with Somerset County Council or another Local Authority, the finish date should be the Sunday). However, exceptionally, where the member of staff works up to and including the last school day of the term, a school can decide to extend the contract into the school holiday period to provide some paid holiday entitlement.

## 2.4 Contracts which are used to cover maternity or long term sickness – including locum headships with ‘knock ons’ in the other school) will have the following start/finish dates:-

- If the first day of work is the beginning of a school term, the start date will either be 1<sup>st</sup> September, 1<sup>st</sup> January or first school day of the Summer Term.
- If the first day of work is not at the beginning of a school term, the start date will be the first school day worked.

- The finish date will be 31<sup>st</sup> December, the last day of the Easter holidays, 31<sup>st</sup> August or the day before which the absent member of staff returns to duty or the day before which a permanent replacement takes up post, whichever is the sooner.

### 3. **Support Staff Employed All Year Round on a Permanent or Fixed Term Contract**

- 3.1 The start date will be the first day of work.
- 3.2 The finish date will be the last day of work. (If this is a Friday and the employee starts work on the following Monday with Somerset County Council or another local authority, the final date should be the Sunday).

### 4. **Support Staff Working Term-Time Only on a Permanent or Fixed Term Contract**

#### **Start Date**

- 4.1 If the first day of work is the beginning of a school term, the start date will be 1<sup>st</sup> September, 1<sup>st</sup> January or the first day after the end of the Easter holidays.
- 4.2 If the first day of work is not at the beginning of a school term, the start date will be the first day worked.

#### **Finish Dates**

- 4.3 If the last day of work is the end of a school term the final date will be 31<sup>st</sup> December, the last day of Easter holidays or 31<sup>st</sup> August.
- 4.4 If the last day of work is the end of a half term, the finish date will be the last day of the half term holiday i.e. the calendar day before the date of the commencement of the new half term e.g. a Sunday.
- 4.5 If the last day of work is not at the end of a full term or half term, the finish date will be the last day worked. (If this is a Friday and the employee starts work on the following Monday with Somerset County Council or another Local Authority, the final date should be the Sunday).

## **GUIDANCE ON THE MANAGEMENT OF FIXED TERM CONTRACTS (FTC)**

### **What is a Fixed Term Contract?**

A fixed term contract (FTC) of employment is one that comes to an end:

- upon reaching a specified date;
- when a specified task has been completed; or
- when a specified event does or does not occur.

### **What do I need to know?**

The reason for a FTC must be stated clearly and unambiguously in the advertisement and restated during the interview, in the offer letter, the Statement of Particulars and on the appointment paperwork submitted to the schools payroll provider. The reasons for appointing to a FTC are limited to specific circumstances:

- Where there is a planned and demonstrable reason for appointing for a limited duration, e.g. cover for maternity leave or long term sick leave, a specific project or task, or cover for seasonal peaks in demand.
- Cover for paid or unpaid leave of absence where the end date is known, i.e. cover for a postholder seconded to an alternative post or on a career break.
- Cover for a vacancy where an appointment has been made but the person appointed cannot take up the post on the date needed.
- Cover for a permanent vacancy, pending re-advertisement having failed to appoint.
- Where continuation of the work carried out is dependent upon the availability of future (normally external) funding.
- Where a fixed term contract is required by statute.

### **What needs to be included in the offer letter?**

The offer letter needs to clearly state the following points:

- That the post is offered on a fixed term contract.
- The reason for the fixed term basis (e.g. to cover a period of maternity leave).
- The expected end date and reason for termination (e.g. the contract will expire on ..... or upon the return of the substantive employee from maternity leave, whichever is the earliest).

### **What needs to be included in the Statement of Particulars?**

The Statement of Particulars needs to repeat the same information, namely:

- that the employment is fixed term;
- why it is offered on a fixed term (e.g. to cover a secondment period);
- how long the term is likely to last;
- the date and / or event which will bring the contract to an end (e.g. the contract will expire on ..... or upon the return of the substantive employee from secondment, whichever is the earliest);

- details of the notice requirements in place should the contract end before the fixed term period ends.

### **What rights do employees on fixed term contracts have?**

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 provide employment rights for employees on fixed term contracts, as follows:

- Right not to be treated less favourably than a comparable permanent employee regarding terms and conditions of employment or suffering any other detriment, unless the treatment can be objectively justified.
- Right to receive information on permanent vacancies and be offered the same opportunities to secure permanent employment.
- Rights that prevent abuse arising from the successive use of fixed term contracts.

### **Who is covered by the Fixed Term Employees Prevention of less favourable treatment Regulations?**

The regulations only apply to fixed term employees, they do not apply to:

- agency workers;
- self-employed workers;
- apprentices;
- placement students;
- employees on training schemes.

### **What is meant by less favourable treatment?**

A fixed term employee must not be treated any differently to a comparable permanent employee with regard to their terms of employment, unless the treatment can be objectively justified.

This would include:

- their general terms and conditions of employment (salary, annual leave, notice periods, sick pay, maternity leave, travel and subsistence etc);
- access to flexible working / flexi time schemes;
- access to training and development;
- access to promotional opportunities or the opportunity to secure a permanent position;
- longer service qualifications for conditions of service;
- access to team meetings or relevant information / consultation processes.
- access to the pension scheme;
- covered by policies and procedures, i.e. discipline and grievance, health and safety, probation and so forth.

### **What is meant by Objective Justification?**

Objective justification applies when there is a strong business case for treating a fixed term employee differently to a comparable permanent employee. There are 2 main ways in which this can happen:

- When the reason for the particular treatment itself can be justified.
- Where it can be shown that the overall value of the employment package is no less favourable.

Reasons for objective justification must be recorded in writing and placed on the employee's personal file.

Advice should be sought from the HR Advisory Service to ensure a consistent approach is applied.

### **What are the implications re access to promotion and permanent vacancies?**

Fixed term employees must be given information about available vacancies and be given the same opportunity to secure a permanent position.

Fixed term employees who apply for permanent vacancies / promotion within the school should be treated in the same way as permanent employees. When short-listing or deciding upon the appointment the panel should apply the same objective criteria to all candidates in terms of how they match the person specification and job description.

The Regulations do not state that fixed term employees should be given preference over other employees in relation to being offered promotion or permanent posts.

### **What do I need to do?**

#### **Renewing Fixed Term Contracts**

There is no limit on the duration of the first fixed term contract.

If an initial fixed term of 4 years or more is subsequently renewed (or the employee is employed on a successive contract) the employment status may be treated from then on as permanent unless the continued use of a fixed term contract can be objectively justified.

A fixed term contract that has been renewed (or where the employee is re-engaged on a successive contract) will gain permanent status once the employee has completed 4 years continuous service, unless the continued use of a fixed term contract can be objectively justified.

Upon completion of 4 years continuous service, the fixed term employee can write to their Manager and request written confirmation that the contract has gained permanent status. A written reply must be sent to the employee within 21 days of their request, either confirming that the contract is now regarded as permanent or explaining the justified and objective reasons why it should remain as a fixed term contract.

The school must inform HR Admin and Payroll Services of any changes to the employee's terms and conditions.

#### **Termination of Fixed Term Contracts**

##### **Natural termination**

The Regulations state that when the fixed term contract expires at the time anticipated (i.e. on the date within the Statement of Particulars or for the known reason) notice does not have to be given as the contract expires automatically, since notice was essentially issued at the time the contract is issued.

However, under these circumstances and in line with the dismissal regulations, the Headteacher should meet with the fixed term employee at the earliest opportunity to confirm that the contract will be coming to an end to enable the employee to have sufficient time to find alternative employment. Clarification also needs to be given why the contract is not being renewed or extended. A right of appeal should also be given. All discussions and details must be confirmed in writing.

The fixed term employee should be made aware of any permanent vacancies within the school which they could apply.

**If the contract lasts 2 years or more and the contract is not renewed by reason of redundancy, the employee will still have a right to a redundancy payment in line with the school's redundancy policy.**

### **Early termination**

Notice provisions for both parties should be incorporated within the fixed term contract to enable either side to terminate the employment relationship before the anticipated expiry date.

If notice provisions have not been included and there is no contractual right to terminate the contract early, the school could be held liable for the pay and benefits the employee would have received until the end of the contract.

### **When can a fixed term contract be terminated?**

#### **Performance / Conduct**

It would be automatically unfair to not renew or extend a fixed term contract purely on the basis of poor performance or conduct. Fixed term employees should be treated in the same way as permanent employees and the appropriate disciplinary / capability procedures should be followed.

#### **Probation**

Fixed term contracts should not be used for the purposes of a trial period.

Employees should be appointed on the appropriate fixed term or permanent contract of employment and the probationary procedure applied (for support staff only).

#### **Extensions**

Where there is a need to extend the term of the contract the current fixed term employee should be offered the extension period. Only if the current fixed term employee declines the offer should a new fixed term employee be appointed.

## **Dismissal Rights**

The non-renewal of a fixed term contract is already classed as a dismissal in law. This means that a fixed term employee whose contract is not renewed has exactly the same employment rights as a permanent employee. Therefore a fixed term employee, with more than 2 years' continuous service, can make a claim for unfair dismissal and will have a right to a written statement detailing the reasons for the dismissal.

**FAQ's on Planning Preparation & Assessment (PPA)**

**1. What is PPA?**

Teachers are entitled to a statutory **minimum** of 10% of timetabled teaching time to be protected for Planning, Preparation and Assessment (PPA). The contractual guarantee is for 10% of a teacher's teaching time **not 1265 hours**. If, for example, a full teaching timetable in a school would be 25 hours then a teacher teaching a full timetable would expect 2.5 hours PPA time a week.

The purpose of guaranteed PPA time is to relieve some of the existing workload pressures on teachers and to raise standards by providing some time for planning, preparation and assessment within the timetabled teaching day.

Guaranteed PPA should be set at the equivalent of at least 10% of a teacher's normal timetabled teaching time. Only teaching time within a teacher's 1265 contracted hours would count for these purposes, not other forms of pupil contact time.

**2. What does a school need to do?**

Schools should have a school PPA Policy to plan for and to select a mix of PPA strategies in such a way that it dovetails with the School Development Plan and effective teaching and learning practices within the school.

**3. Who is entitled to PPA time?**

Teachers who are employed under the School Teachers' Pay and Conditions Document, whether they are qualified or unqualified, and who have a teaching timetable, must be allocated 10% minimum of their timetabled teaching time as PPA.

Headteachers, Deputy and Assistant Heads are entitled to PPA time equivalent to a minimum 10% of their teaching timetable. This is in addition to any other non-contact time which teachers may receive – e.g. management and leadership time.

An instructor appointed to teach if there is no qualified teacher or trainee available to teach becomes an unqualified teacher and therefore is entitled to PPA.

**4. Who is not entitled to PPA time?**

- Any staff who are **not** employed under teachers' terms and conditions, e.g. an instructor who is not a qualified teacher.
- Any staff employed under STPCD who don't have a teaching timetable.
- Any staff whose posts are not covered by the terms of the STPCD, even if the person is a qualified teacher.

- Higher Level Teaching Assistants (HLTAs) are not contractually entitled to PPA time under the terms of the National Agreement, but it would be good practice for schools to explore giving HLTAs PPA time. This time, however, can be outside the timetabled teaching time, i.e. can be given during assembly time.

#### 5. **How does it apply to NQTs and Student Teachers?**

The PPA time is over and above any other contractually guaranteed non-contact time. NQTs are entitled to teach no more than 90% of the time a teacher at the school without management responsibilities would be expected to teach and so would receive 10% PPA time in addition to the 10% reduction of teaching time.

If a school based training programme for teachers dictates that the student teacher can only teach 65% of a full timetable, the decision of whether he or she gets PPA would be dependent on what the 35% non-teaching time has been assigned for. If it includes dedicated PPA time equivalent to that a qualified teacher would receive, then there would be no need to allocate further PPA time.

#### 6. **Are supply teachers & agency staff eligible for PPA time?**

Supply teachers appointed to provide short-term cover for absent teachers are not entitled to 10% PPA time from the school. A supply teacher appointed to provide 2 days (10 teaching hours) cover should not expect to be given one hour PPA time by the school.

Agency staff are contractually entitled to PPA time if they are delivering specified work that is scheduled into the timetabled day (i.e. not for cover or any other kind of unscheduled lesson delivery). For practical purposes this can be deemed to be included in their hourly rate, though the school can give them additional PPA time if it wishes.

#### 7. **What is “timetabled teaching time”?**

PPA time must be allocated within the timetabled teaching day. Teachers cannot be given PPA time during registration or the collective act of worship as these do not form part of the timetabled teaching day. This does not differ for faith schools.

#### 8. **What is the position of the Headteacher in terms of ‘directed time’ and PPA?**

Although PPA falls within directed time, it is for teachers to determine the particular PPA priorities for each block of guaranteed PPA time (this does not preclude them from choosing to use some of the time to support collaborative activities). The Headteacher remains responsible for the effective use of PPA time, but he/she should be more concerned with its outcomes and its impact on standards than its content/substance.

Teachers should consider over time if they are making the most effective use of their PPA time in relation to outcomes, because they are accountable for the time spent on this activity.

9. **If a teacher already has timetabled leadership and management time, can PPA be incorporated into that time?**

Guaranteed PPA time must be set as a minimum of 10% of the timetabled teaching time. It would, therefore, follow that provision must be made for 10% PPA in addition to any time already provided specifically for leadership and management activities. Time that has been clearly designated for leadership and management activities should not be reduced in order to accommodate PPA time. Consideration could be given to moving some leadership/management tasks to non-timetabled time within the school session, thereby freeing up time within the timetable for the allocation of PPA, although the school will need to have due regard to the work/life balance of the teacher.

10. **What is PPA to be used for?**

Planning, preparation and assessment activities which the teacher feels add the most value to his or her teaching. Teachers may choose to plan in conjunction with colleagues for some of their PPA time but this must be their decision. PPA time (at least up to the minimum of 10%) must be safeguarded. It is not for cover.

11. **When and how can PPA time be taken?**

In order for the time to be put to meaningful use by the teacher, it must be allocated in blocks of no less than 30 minutes.

Guaranteed PPA time should be provided as part of a teacher's normal planning, preparation and assessment, usually on a weekly or fortnightly timetable. A part-time teacher who has a weekly timetabled teaching commitment of fewer than 5 hours will accrue less than 30 minutes PPA time in that week and therefore should take the time fortnightly. If a teacher has a very limited timetabled teaching commitment it may be possible, by negotiation, to take PPA time at slightly longer intervals.

Guaranteed PPA should take place during the school teaching timetable (i.e. during the time in which pupils are taught at the school) and must not be bolted on before or after the timetabled teaching day. PPA time should be safeguarded. It is not for cover.

12. **Where can PPA take place?**

PPA time is directed time so the Headteacher has the authority to direct the teacher to be on the school premises. However, with the Headteacher's agreement it may take place elsewhere.

**What happens to PPA time when a teacher is off sick on that day?**

The PPA policy regarding sickness should be established from the beginning. If a teacher is off sick for 1 week, and therefore has not taught for 1 week,

then it is reasonable for no PPA time to be re-allocated. If a teacher is off sick for 1 day and teaches for the rest of the week, then PPA time could be given. If a teacher is off sick on the day they would normally take their PPA time then this should be rescheduled but not necessarily that same week.

**If somebody is on a course when it is the day allocated for PPA, is PPA time re-allocated or is the course considered PPA time?**

A course is not considered as PPA time. It is essential to look at the circumstances. If PPA time falls on an INSET day or a course, attended by a teacher, then where it is possible the session will be moved to another time slot.

**Guidance on Staff Undertaking Specified Work and Cover Supervision**

Support staff can undertake planning, preparation and delivery of lessons and assess and report on the development, progress and attainment of pupils provided this is under the supervision of an assigned teacher under supervision arrangements made by the Headteacher. Support staff can also be used as Cover Supervisors.

The evaluated grades for staff undertaking specified work and cover supervision are:

- Specified Work – grade 12
- Cover Supervisors – grade 15

The definition of 'specified work' includes the following activities:

- a) Planning and preparing lessons and courses for pupils.
- b) Delivering lessons to pupils. This includes delivery via distance learning or computer aided techniques.
- c) Assessing the development, progress and attainment of pupils.
- d) Reporting on the development, progress and attainment of pupils.

The class teacher remains accountable for the quality of the teaching and learning in the classroom.

Cover Supervisors are employed in classroom situations where no active teaching is taking place, i.e. the pupils are undertaking learning activities which are self-directed.

There is no statutory timescale for how long a support member of staff can cover an absent teacher, however, it is recommended this should only be short term arrangement in order to protect the standards of teaching and learning.

When considering how best to cover an absent teacher, the Headteacher will need to consider the skills and expertise of the individual and be satisfied they are suitable to undertake this role taking into account the HLTA standards.

Allowances will not be made for how the class is covered during an OFSTED inspection. OFSTED's purpose is to judge the standard of teaching and learning taking place leading to pupil progress and attainment. Systems of supervision and the quality of their implementation will be scrutinised and judged as part of the overall inspection.

HLTA (Higher level Teaching Assistant) is not a job. It is a status awarded following an external assessment of an individual's skills and expertise against national standards set by the Teacher Training Agency.

For the 'specified work', the HLTA standards or their equivalent should be met, particularly if the support staff member is undertaking all the "specified work" with a whole class. If a lower breadth and/or depth of 'specified work' is being undertaken, suitability will be determined by the Headteacher based on skills, expertise and experience. The Local Authority can provide job descriptions for HLTA posts.

In accordance with Section 133 of the Education Act 2002, there is a category of 'other unqualified persons' who can carry out the specified work, subject to them

being under the supervision of an assigned teacher and working in accordance with supervision arrangements made by the Headteacher. This category covers all staff other than qualified teachers, instructors (teachers with a specialist qualification for the type of teaching being undertaken), teachers undergoing training and overseas trained teachers.

It is essential that support staff undertaking "specified work" have the necessary skills and expertise. HLTA status confirms that such skills and expertise have been properly demonstrated and that, therefore, Headteachers, teachers, parents and Governors can be assured that the support staff member can enhance the pupils' learning.

There is no requirement for planning time to be given either within or outside school session times for staff undertaking specified work. However, if the requirement for planning is regular and extensive, the provision of paid planning time whether within the school session day or before/after it, would be reasonable; in which case it would need to be the subject of consultation and agreement with the support staff member.

Where a member of support staff undertakes HLTA work in addition to a Teaching Assistant contract on a regular basis (i.e. same number of hours/days each week) then they should be issued with a separate contract for the HLTA hours. This will ensure the individual is paid correctly for the actual roles undertaken.

Where the arrangement is more irregular the individual should have a HLTA casual record set up and claim for the HLTA hours undertaken on a month by month basis. Schools are advised to contact their payroll provider for advice.

**ACADEMIES – CONTINUOUS SERVICE PROVISIONS FOR TEACHING AND SUPPORT STAFF**

All staff being transferred to an Academy are protected by TUPE regulations, which means continuity of service is recognised for the purposes of calculating redundancy, maternity, sickness and holiday entitlements.

Where staff choose to change schools voluntarily, i.e. because they have applied for a vacancy not as part of a transfer, then TUPE protection does not apply. However, both existing and new Academies are listed on the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999. The Modification Order provides that where an employee between any bodies listed on the Modification Order without a break between these employments, all previous continuous service will be recognised for the purposes of calculating pay in a redundancy situation.

The calculation of continuous service for rights such as maternity and sickness benefit vary depending on the situation and are explained briefly in the table below – please also refer to LGE Guidance on transfer of school staff to academies.

<b>ACADEMIES – CONTINUOUS SERVICE PROVISIONS FOR TEACHING AND SUPPORT STAFF</b>			
<b>Scenario</b>	<b>Teaching Staff Entitlements</b>	<b>Support Staff Entitlements</b>	<b>Notes</b>
<p>Any TUPE transfer between school and academies.</p> <p>This could be:</p> <ul style="list-style-type: none"> <li>• from local Authority school to Academy;</li> <li>• from Academy to Local Authority school;</li> <li>• from Academy to Academy.</li> </ul>	<p>Staff transferring under TUPE keep their existing terms and conditions which means continuity of service applies in respect of:</p> <ul style="list-style-type: none"> <li>• redundancy;</li> <li>• contractual sick pay and scheme;</li> <li>• contractual maternity pay and scheme.</li> </ul>	<p>Staff transferring under TUPE keep their existing terms and conditions which means continuity of service applies in respect of:</p> <ul style="list-style-type: none"> <li>• redundancy;</li> <li>• contractual sick pay and scheme;</li> <li>• contractual maternity pay and scheme;</li> <li>• annual leave.</li> </ul>	<p>This also applies to TUPE transfers of employees between an Academy and a foundation/ trust/ voluntary aided school.</p> <p>*a 2 year qualifying period applies to any redundancy entitlement.</p>

<b>ACADEMIES – CONTINUOUS SERVICE PROVISIONS FOR TEACHING AND SUPPORT STAFF</b>			
<b>Scenario</b>	<b>Teaching Staff Entitlements</b>	<b>Support Staff Entitlements</b>	<b>Notes</b>
Local Authority staff moving voluntarily to an Academy not under TUPE (i.e. they have applied for a vacant post).	<p>Continuous service for calculating redundancy pay; Academy service counts as per modification order.</p> <p>For all other terms the Academy can set their own terms and conditions so it will depend on their individual arrangements.</p>	<p>Continuous service for calculating redundancy pay; Academy service counts as per modification order.</p> <p>For all other terms the Academy can set their own terms and conditions so it will depend on their individual arrangements.</p>	
Staff returning voluntarily from an Academy back into a Local Authority not under TUPE regulations (i.e. they have applied for a vacant post)	<p>Continuous service for calculating redundancy pay; Academy service does not count but it is important to note that service does not have to be continuous for sickness purposes as it is aggregated Local Authority teaching service that counts.</p>	<p>Continuity of service applies in respect of:</p> <ul style="list-style-type: none"> <li>• redundancy;</li> <li>• contractual sick pay and scheme;</li> <li>• contractual maternity pay and scheme;</li> <li>• annual leave.</li> </ul> <p>This is due to Section 14.1 of the Green Book Provisions for support staff which state that:</p> <p>“for the purposes of entitlement regarding annual leave, occupational sickness and maternity schemes, continuous service will include any organisation covered by the modification order.”</p>	<p>See paragraph below on what constitutes a break in service.</p> <p>*a 2 year qualifying period applies to any redundancy entitlement.</p>

<b>ACADEMIES – CONTINUOUS SERVICE PROVISIONS FOR TEACHING AND SUPPORT STAFF</b>			
<b>Scenario</b>	<b>Teaching Staff Entitlements</b>	<b>Support Staff Entitlements</b>	<b>Notes</b>
Staff moving between different academies (not under TUPE)	<p>Continuous service for calculating redundancy pay; Academy service counts as per modification order.</p> <p>For all other terms the Academy can set their own terms and conditions so it will depend on their individual arrangements.</p>	<p>Continuous service for calculating redundancy pay; Academy service counts as per modification order.</p> <p>For all other terms the Academy can set their own terms and conditions so it will depend on their individual arrangements.</p>	
<ul style="list-style-type: none"> <li>• A break in service of more than 1 week (running from Sunday to Saturday) between contracts normally constitutes a break in service.</li> <li>• It should also be noted that where any employee is under notice of redundancy and they receive another job offer from a body covered by the modification order before they leave, then there is no redundancy payment if the job is taken up within 4 weeks of finishing their current job.</li> </ul>			