

STAFF NOTICE 7: FIXED TERM APPOINTMENTS

FILE PP6/2

1. Background

This is a revised Staff Notice 7, first issued in January 2002.

This amended notice gives guidance on statutory changes introduced in October 2002 that affect Fixed Term staff (the *Fixed Term Employees Prevention of Less Favourable Treatment Regulations*) and introduces new procedures for fixed term and permanent staff to apply for other posts within the FC. Guidance has been awaited from the Cabinet Office on some points arising from the Regulations and unfortunately this held up earlier issue of this information.

Most FC staff are recruited on permanent contracts. But the FC recruits staff on fixed-term appointments to fill certain posts where there may not be a long-term need. Recruitment within the Forestry Commission is governed by the Civil Service Commissioners' Recruitment Code. This means that the FC, like other Departments and Agencies, have to operate within two sets of requirements: the Recruitment Code and employment law.

Under the Code, FT appointments (or any other temporary appointment) can generally only be extended or made permanent if fair and open competition took place and the advertisement made clear those possibilities to candidates.

In January 2002, we decided that staff recruited for a fixed-term would be eligible to apply for internally trawled posts.

2. Statutory Changes

In October 2002, the Fixed Term Employees' Regulations were introduced. In these Regulations, the definition of 'fixed term' includes any contract limited by time, by the completion of a specific task, or a specific event (other than normal events such as retirement). Apprentices, agency workers and people on temporary work experience or training schemes are specifically excluded.

The Regulations have the following main provisions:

- The use of successive fixed term contracts will be limited to a time period of 4 years, unless the use of further fixed term contracts can be justified on objective grounds. However, the limit does not apply to the first fixed term contract entered into, which can be for more than 4 years. If a contract of 4 years or more is renewed, it will be treated as permanent unless the use of the FT contract can be objectively justified.
- For the purposes of this part of the Regulations, only service accumulated from 10 July 2002 will count towards the 4-year limit.

Example: if an employee (recruited through fair and open competition) has a 5-year FTA contract from 1 October 2002 to 1 October 2007, and it is

renewed, the second contract will be regarded as permanent unless continued use of a fixed term contract is objectively justified.

- ❑ The limitation on the use of fixed term appointments will only apply where the employee has been 'continuously employed' for the whole 4 year period. However, 'continuous employment' can exist even when there is a gap between successive contracts of employment. Managers should seek advice from Personnel Services, where necessary, though legal advice may be sought in individual cases.
- ❑ A requirement to notify fixed term staff of permanent vacancies. The FC met this requirement by our changes earlier this year.
- ❑ Fixed Term employees have the right not to be treated less favourably than a comparable permanent employee doing the same or broadly similar work, requiring similar skills and qualifications, usually at the same establishment- unless the difference can be justified on objective grounds (for example, by reference to a genuine business objective). FT employees have the right to ask their employer for a written statement giving the reason for any less favourable treatment.
- ❑ The introduction of the right for a Fixed Term employee to apply to an Employment Tribunal to challenge less favourable treatment linked to their contract status. In the FC, staff should first use our existing grievance procedure if they wish to question any potential inequality of treatment in their terms/conditions of employment.
- ❑ From 1 October 2002 anyone on a contract of less than 3 months qualifies for Statutory Sick Pay. This does not affect any pre-existing and more advantageous contractual rights to sick pay.

3. Forestry Commission Post Filling and Probation Procedures

The statutory changes mean that a number of amendments are being made to our procedures to ensure we meet legal requirements for equity of treatment between fixed term and permanent staff.

- ❑ With effect from the date of this notice, the restrictions on applying for other posts only towards the end of a fixed term appointment or following the successful completion of probation (the latter applied previously to permanent staff) will be removed. Staff will only need to meet the existing requirements of meeting the person specification and support from their line manager in order to submit an application;
- ❑ With the exception of staff managed by central Civil Service Units (e.g. Statisticians and Economists), a standard probation period of 1 year will apply to all new fixed term and permanent appointments. We will be seeking co-operation from line managers to ensure that the final review of performance takes place well within this 1-year period. Staff already in post with shorter probation periods still running will be unaffected;
- ❑ If an individual is still on probation when successful in getting a new job in the FC following a trawl or open recruitment competition, he/she will serve the greater of either the remainder of the probation period or a new 6 month probation period in the new job.

Amendments will be made to the wording of trawl notices to reflect these new application principles.

An Annex to this notice (replacing the Annex in the January notice) will be issued next month after discussions with the Trade Union Side. This will outline procedures that will apply when permanent staff apply for fixed term posts.

4. Enquires

Please contact:

- David Taylor or Jean Lindsay in Personnel Services for advice on individual cases;
- Fiona Wright in Personnel Policy Branch for advice on the legal changes.

W J Anderson
Director Personnel
24 December 2002

¹ The original SN7 was issued in December 2002. The attached annex was added in July 2003.

SN 7 ANNEX A

1. Use of Fixed Term Appointments in the FC

Fixed Term Appointments are generally used in the FC where:

- ❑ the duration of the job is known to be time bounded; or
- ❑ there is funding available only for a finite period; or
- ❑ there are other management reasons for appointing someone for only a limited period to a job. This will generally be to cover for maternity leave, career breaks, secondments to another Government Department or external body, or where there is a short term need for specific specialist skills.

The minimum period for a FTA in the FC is usually one year. 'Casual' appointments of less than 1 year are now known in the FC as a 'short term, temporary appointments', though some of these appointments may be covered by the legal provisions of the *Fixed Term Employees' Regulations*.

2. Civil Service Fair and Open Recruitment Principles

The FC operates within the requirements of the *Civil Service Recruitment Code*. The Code requires that, in order to be able to apply for an internal trawl for a permanent post that is not being advertised externally, a fixed term employee generally should have been recruited through fair and open competition, with the possibility of permanency made clear in the advert.

However, at the beginning of 2002, we decided that FT Appointees could apply for trawled posts even if their original appointment did not contain any suggestion of the possibility of extension or permanency. Where the individual's appointment is converted to permanency, it is made under one of the permitted exceptions to the Recruitment Code that are allowed by the Civil Service Commissioners (to whom every such appointment has to be reported).

3. External Advertising

All FTAs in the FC are now advertised with the following words incorporated in the advert:

'Extension of the contract, or conversion to permanency, or transfer to another part of the Civil Service, is possible although no guarantee can be given.'

4. FTA Posts Becoming Permanent

Where an appointment has initially been made on a fixed term basis and it is later decided that the post should become permanent, the post-holder can take up the position on a permanent basis, provided that:

- ❑ the post remains in the same Pay Band; and
- ❑ it has not substantially changed in content, which would justify a fresh trawl or recruitment; and
- ❑ the post-holder has been performing fully effectively in the role.

²If there are any doubts about the grading of the post, then JEGS will be applied first.

Other than posts covered by fluid grading in Forest Research, if it is decided at the conclusion of the initial appointment that the post is to be made permanent but has developed to a higher Pay Band, it will be trawled. The post-holder will be eligible to apply for the position in open competition with other staff.

For posts in Forest Research that are subject to fluid grading, the normal mechanisms will apply.

5. Permanent Staff

Where managers decide to appoint to a fixed term post by external, open competition, permanent staff will be eligible to apply for and compete on the same basis as external applicants if they meet the minimum qualifications/specification requirements set out in the advert.

They will be required to complete the application form and their application will be subject to normal fair/open sift and interview procedures in line with the Civil Service Recruitment Code.

If successful, he/she will retain their permanent contract status and the transfer will be handled in the following way:

- For FTA positions of less than 3 years, detached duty terms will normally apply. If the post is in a higher pay band, a Temporary Responsibility Allowance (TRA) will be paid for the duration of the posting in the FTA and, on completion, the post-holder will revert to their substantive (lower) Pay Band.
- For FTA positions of 3 years or longer full public interest transfer terms will normally apply. If the post is in a higher pay band, the posting will be viewed as a permanent promotion if an open, competitive trawl has taken place.
- Exceptionally, a post vacated by a permanent member of staff who is successful in obtaining a fixed term post might not be held open for him/her to return to. The decision to back-fill such a post permanently will be at the discretion of the unit manager, who will take a decision before the appointment to the FT post is taken up. Given that the original post holder in these circumstances will have no post to return to, it follows that their posting will not be regarded as detached duty, and public interest transfer terms will apply, regardless of the length of the FT job.

At the end of the FTA period, if the FT post is not made permanent and the individual's original post has been filled, every effort will be made to find a post in an area of the post-holder's choice, including use of the Transfer Register. This cannot be guaranteed, however, and he/she may be required to apply for a fresh posting through normal trawl procedures and compete with any other candidates. Priority is, however, given to identifying a post for anyone who is surplus.

² The original SN7 was issued in December 2002. This annex was added in July 2003.