
Wales Negotiating Committee Further Education

**Joint Agreement for the Employment of
Fixed-Term Employees**

1. Context

- 1.1. Colleges recognise the responsibilities placed on them by the Fixed Term Employees (prevention of Less Favourable Treatment) Regulations 2002.
- 1.2. Where fixed-term contracts are used, Colleges will ensure that staff are treated no less favourably than staff with permanent contracts and are informed of all vacancies.
- 1.3. Colleges will, where possible, avoid the successive use of fixed-term contracts. Individual fixed term contracts will be reviewed on completion of three years' service, or earlier if appropriate and consideration will be given to extending the contract on a permanent basis.
- 1.4. Fixed-term contracts will only be used where evidence can be provided of time-limited circumstances.
- 1.5. The reasons for the use of a fixed term contract will be communicated to staff in writing at the outset of the offer of employment.
- 1.6. Colleges will carry out an annual equality data monitoring exercise which includes the use of fixed term contracts. This will be shared with the recognised unions.

2. Status

- 2.1. This agreement has been jointly agreed between the trade unions and employers in the Wales Negotiating Committee Further Education.
- 2.2. This agreement is for use by individual Colleges in order to develop policy and procedure for the use of fixed term contracts. In determining local policy, normal consultation arrangements should apply with recognised trade unions in accordance with the terms set out in this collective agreement.
- 2.3. This agreement was impact assessed at a national level to assist Colleges in meeting the requirements of Equality legislation and the Welsh Language Act. The Equality Impact Assessment is detailed in Appendix 1. It is for each College to undertake their own equality impact assessment at local level.

3. Scope

- 3.1. This agreement applies to all staff employed on fixed term contracts.
- 3.2. Colleges are committed to maximising opportunities to provide continuity of employment for all staff and to use fixed-term contracts responsibly and justifiably.

4. Policy requirements

- 4.1. The aim of this agreement is to enable Colleges to develop policy in order to

- set out the use of fixed-term contracts
- provide for the transfer of fixed-term staff to permanent contracts where possible and specify the circumstances in which fixed-term contracts may be used
- specify how fixed-term contracts will be managed
- specify the action required at the termination of a fixed-term contract

5. Procedural requirements

5.1. The circumstances in which fixed-term contracts may be considered

5.1.1 Every case needs to be looked at individually. Examples of circumstances where the use of fixed term contracts may be appropriate are given below (this list is not exhaustive):

- i. The post is a clearly defined training or career development position;
- ii. The post is a secondment;
- iii. The post requires specialist skills for a limited period or is to accomplish a particular task or project for a limited period;
- iv. The appointment is to provide cover for a member of the College's staff who is absent for a limited period (for example on maternity leave, sickness absence, career break, secondment or sabbatical leave);
- v. The post is externally funded for a fixed period e.g. ESF or Welsh Government contracts.

5.1.2 Notwithstanding the examples given above, in all cases the concept of objective reasons should refer to precise and concrete circumstances characterising a given activity which are capable in that particular context of justifying the use of fixed-term contracts.

5.1.3 The guidance on objective justification above will be reviewed in light of developing case law.

5.2. Limiting the use of fixed-term contracts

5.2.1 Colleges are committed to limiting the use of fixed-term contracts except where the conditions in section 5.1 apply. Colleges will ensure their policy for the use of fixed term contracts is brought to the attention of all managers and staff and is well publicised. It also commits to ensuring that all managers receive appropriate training on the implementation of this policy.

5.2.2 Fixed-term contracts will only be used when there are transparent and objective reasons and where there is a genuine fixed-term need. This test for whether there is a genuine fixed-term need should be applied in each and every case.

5.2.3 Overall responsibility for the management of fixed-term contracts should lie with the human resources department or the senior manager responsible for HR matters. Decisions on the use of fixed-term contracts should not be made solely by heads of departments or line managers but must be referred to the human resources

department to ensure that they are in line with College policy and in accordance with the fixed-term employee regulations.

5.2.4 Colleges will also take steps to monitor the implementation of the policy centrally and will take appropriate action where it appears that the policy is not being followed within departments.

5.3 Transfer of staff to permanent contracts

5.3.1 Colleges will review fixed term contracts on completion of three years' service, or earlier if appropriate and consideration will be given to extending the contract on a permanent basis

5.3.2 Employees will be issued with a permanent contract on completion of 4 consecutive years' service at the latest unless there is an objective justification for not doing so.

5.3.3 Where there is an objective justification a written record will be made of the reasons for the decision, and the staff member will be informed in writing of the specific reasons and objective justification for that decision.

5.4 Management of fixed-term contracts

5.4.1 Where staff are placed on a fixed-term contract in accordance with section 5.1 they shall be treated no less favourably than comparable staff on permanent contracts.

5.4.2 In particular, fixed-term staff will:

- i. have equivalent terms and conditions of employment to colleagues on comparable permanent contracts including pay, absence provisions, pensions;
- ii. be provided with a suitable working environment;
- iii. have the same opportunity as other staff to access services to develop their career such as staff development, training, appraisal and careers advice
- iv. be provided with information on, and the opportunity to apply for positions in the College.
- v. be able to access College facilities such as libraries and intranet services
- vi. have the right to participate in College governance and committees;
- vii. have their contracts reviewed annually to consider whether the continued use of their fixed-term contract remains justifiable on objective grounds

5.5 Ending of a fixed-term contract

- 5.5.1 Colleges recognise that the ending of a fixed-term contract is a dismissal in law.
- 5.5.2 On completion of 2 years' continuous service the ending of a fixed-term contract will constitute a redundancy.
- 5.5.3 The termination of a fixed term contract must not be used for the sole purpose of preventing the accrual of employment and/or contractual rights.
- 5.5.4 Colleges will use its best endeavours to avoid compulsory redundancies of both permanent and fixed-term staff.
- 5.5.5 Sufficiently in advance of the expiry of a fixed-term contract to enable meaningful consultation to take place Colleges should:
- consider all alternative options e.g. alternative funding arrangements, renewal, retraining and redeployment;
 - consult with the post holder on the reason for non-renewal and the alternative options. A written invitation to a consultation meeting should be sent to the post holder. The letter shall confirm that the post holder may be accompanied by a trade union representative at the consultation meeting and at any further discussions about his/her post.
- 5.5.6 At the same time, it is good practice to consult with individuals together with trade union representation about any potential redundancies.
- 5.5.7 As part of that process Colleges will ensure that any suitable alternative employment opportunities are brought to the attention of the member of staff. This will include considering any posts for which training may be required. The redeployment process is about matching transferable skills not necessarily seeking an exact job match.
- 5.5.8 Where the redeployment process has been unsuccessful following a trial period, which may be extended with agreement, the redundancy procedure should be applied.
- 5.5.9 A post holder will be given the right to appeal any decision not to renew his/her contract in accordance with the redundancy procedure.

5.6 When a fixed term post becomes permanent

There may be occasions whereby a fixed term post becomes permanent during, or on expiry of a fixed term period. Colleges should agree procedures locally with trade unions to determine whether the fixed term post holder has automatic right to be considered for the permanent post.

6 Monitoring and review

This agreement will be monitored and reviewed every three years by the Wales Negotiating Committee Further Education. Next review date February 2018.

Wales Negotiating Committee Further Education

**Joint Agreement for the Employment of
Fixed-Term Employees**

SIGNATURES OF THE PARTIES TO THIS AGREEMENT

- (a) ColegauCymru

- (b) AMiE

- (c) ATL

- (d) GMB

- (e) NASUWT

- (f) UCU

- (g) Ucac

- (h) UNISON

- (i) Unite – the Union

Date of Commencement of this Agreement:

March 2015

Wales Negotiating Committee Further Education (WNCFE)

Equality Impact Assessment

Summary

1. Name of function/agreement:

Joint Agreement for the Employment of Fixed-term Employees

2. Scope

This Joint Agreement applies to all staff employed on fixed term contracts by Further Education Colleges in Wales.

3. Lead Officer/committee member:

This Equality Impact Assessment was undertaken by the WNCFE Drafting Group and has been reviewed by the WNCFE Committee.

4. Main Aims/purposes/outcomes of the agreement:

This agreement has been jointly agreed between the trade unions and employers in the Wales Negotiating Committee Further Education and is for use by individual Colleges in order to develop agreement and procedure for the use of fixed term contracts. Colleges are committed to maximising opportunities to provide continuity of employment for all staff and to use fixed-term contracts responsibly and justifiably in accordance with equality legislation.

5. Has consultation taken place regarding this agreement?

The WNCFE has engaged with Colleges and Joint Trade Unions in determining any impact on people with protected characteristics. The feedback highlights that a significant proportion of fixed term contracts are used for the purposes of maternity/sickness cover and posts which rely on external funding for a defined period. The purpose of the agreement is to prevent any less favourable treatment of staff employed on fixed term contracts. The agreement aims to ensure that Colleges develop policy and procedure which is inclusive and reflects the terms set out in a fair and consistent way for all staff employed in FE.

6. What is being done to limit any negative impact or promote positive impact on protected groups (See section 2)?

The agreement sets out the requirement that colleges will ensure their policy for the use of fixed term contracts is brought to the attention of all managers and staff and is well publicised. It also commits to ensuring that all managers receive appropriate training on the implementation of this policy.

7. How will the proposals help promote equality, eliminate discrimination and promote good relations?

The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff and all protected characteristics and to use fixed-term contracts responsibly and justifiably.

8. Is there an action plan in place? YES

Equality Impact Assessment

1. Data Collection and Evidence

<p>What evidence e.g. data, research, results of engagement and consultation have you used to consider how this agreement might affect people with protected characteristics? Evidence should be linked clearly to the relevant protected characteristic</p> <p>Please link to any relevant documents. Describe who you engaged with and the results? (It is a statutory requirement to engage with people with protected characteristics).</p> <p>The committee in considering the duty in respect of negotiations will want to consider national data as well as data specific to the sector</p>	<p>In considering relevant data and evidence, the WNCFE Committee have considered the following:</p> <p>Legislation: The WNCFE has considered the main Acts and Regulations covering workers on fixed-term contracts and the legislative requirements are incorporated into the agreement, as follows:</p> <ul style="list-style-type: none"> • The Employment Act 2002 • The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) which implement the provisions of the Fixed-term Work Directive (1999/70/EC) into UK law • The Fixed-term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008 (SI 2008/2776) <p>Engagement: The WNCFE has engaged with Colleges and Joint Trade Unions in determining any impact on people with protected characteristics. The feedback highlights that a significant proportion of fixed term contracts are used for the purposes of maternity/sickness cover and posts which rely on external funding for a defined period. The purpose of the agreement is to prevent any less favourable treatment of staff employed on fixed term contracts. The agreement aims to ensure that Colleges develop policy and procedure which is inclusive and reflects the terms set out in a fair and consistent way for all staff employed in FE Colleges in Wales.</p>
<p>What additional research, data or consultation is required to fill any gaps in understanding the effects of the agreement?</p>	<p>The WNCFE Committee will review the agreement every three years. Further consultation will take place to inform any developments of the agreement.</p>

	The agreement sets out the requirement for Colleges to carry out an annual equality data monitoring exercise which includes the use of fixed term contracts. This will be shared with the recognised unions.
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2 Assessment of impact and strengthening agreement

This section asks you to assess the impact of the agreement on each of the protected groups. Using the information available, identify the effects on this agreement on the following groups:

Please indicate impact						
	+ive impact Y/N	-ive impact Y/N	No impact Y/N	How the group affected and what is the evidence?	How could you limit the negative impact	How can you promote positive impact ¹
Age <i>Identify the impact/potential impact of the service on older people and younger people.</i>	Y	N	N	The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff of all ages and to use fixed-term contracts responsibly and justifiably.	No negative impact identified	The agreement sets out the requirement that colleges will ensure their policy for the use of fixed term contracts is brought to the attention of all managers and staff and is well publicised. It also commits to ensuring that all managers receive appropriate training on the implementation of this policy.

¹ What measures does the agreement include to help advance equality, eliminate discrimination and promote good relations?

<p>Disability Identify the impact/potential impact on disabled people (ensure consideration of a range of impairments, e.g. physical, sensory impairments, learning disabilities, long-term illness).</p>	Y	N	N	<p>The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff and to carry out an annual equality data monitoring exercise to consider any impact on disability. The agreement sets out that colleges use fixed-term contracts responsibly and justifiably.</p>	No negative impact identified	As above
<p>Gender Reassignment (GR) Identify the impact/potential impact of the service on transgender people.</p>	Y	N	N	<p>The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff and to carry out an annual equality data monitoring exercise to consider any impact on gender reassignment. The agreement sets out that colleges use fixed-term contracts responsibly and justifiably.</p>	No negative impact identified	As above
<p>Marriage and civil partnership (M&CP) Identify the impact on married people or people in civil</p>	Y	N	N	<p>The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff and to carry out an annual equality</p>	No negative impact identified	As above

Religion / Belief <i>Identify the impact/potential impact of the service on people of different religious and faith groups.</i>	Y	N	N	contracts responsibly and justifiably. The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff and to carry out an annual equality data monitoring exercise to consider any impact on religion/belief. The agreement sets out that colleges use fixed-term contracts responsibly and justifiably.	No negative impact identified As above
Sex <i>Identify the impact on Men, women, boys ,girls</i>	Y	N	N	contracts responsibly and justifiably. The agreement sets out the commitment of colleges to maximise opportunities to provide continuity of employment for all staff and to carry out an annual equality data monitoring exercise to consider any impact on men and women. The agreement sets out that colleges use fixed-term contracts responsibly and justifiably.	No negative impact identified As above

<p>you will take to build into all stages of the procurement process the requirement to consider the equality duty. You will need to think about:</p> <ul style="list-style-type: none"> ● tendering and specifications ● awards process ● contract clauses ● performance measures, and monitoring and performance measures. 	
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5. Monitoring, Evaluating and Reviewing

<p>How will you monitor the impact and effectiveness of the new agreement? This could include adaptations or extensions to current monitoring systems, relevant timeframes and a commitment to carry out an EIA review once the agreement has been in place for one year. List details of any follow-up work that will be undertaken in relation to the agreement (e.g. survey, specific monitoring process etc).</p>	<p>This agreement will be monitored and reviewed every three years by the Wales Negotiating Committee Further Education. Should an issue be raised by a College or a Trade union which would require an earlier review of the agreement this will be undertaken.</p>
<p>Give details of how the results of the impact assessment will be published, including consultation results and monitoring information if applicable.</p>	<p>The Joint Agreement and the Equality Impact Assessment will be published on the ColegauCymru internet pages and will include details of the arrangements for monitoring.</p>

6. Action Plan

The below provides an opportunity to state how any negative impact will be mitigated. It also allows you to list how you will tackle any gaps in the agreement. Look back through steps 1 – 7 of the EIA and include any identified actions in the plan below. Ensure that each action is listed with a target date and assigned to a named member of the committee.

Action	Responsible Person	By When	Progress
ColegauCymru to dedicated page for WNCFE in order to upload documents for public access.	CEO - ColegauCymru	31 March 2015	
Publish summary of EIA ²	CEO - ColegauCymru	31 March 2015	
Welsh translation of the agreement	CEO - ColegauCymru	31 March 2015	
Made arrangements for the agreement to be provided, on request, in different formats including, large Braille, cassette tape, disk, CD Rom.	CEO - ColegauCymru	31 March 2015	

² summaries of EIAs where there is substantial impact will need to be published