

# **FIXED TERM EMPLOYEES' (PREVENTION OF LESS FAVOURABLE TREATMENT) REGULATIONS 2002 - (IMPLEMENTING THE FRAMEWORK AGREEMENT ON FIXED TERM WORK) REGULATORY IMPACT ASSESSMENT**

## **SUMMARY**

**Issue** The growth of fixed term contracts (FTC) in several European countries has led to concerns that employees on FTC may be less favourably treated than employees on open-ended contracts.

**Fixed term work** Based on information from the Labour Force Survey we estimate that the number of people working on FTC in the UK is between **1.1 and 1.3 million** and has increased by approximately 7% between 1994 and 2001. The public sector uses proportionately more FTC than the private sector and accounts for just under half of the total. The public sector also accounts for over 70% of fixed termers who have been in their jobs for over two years. Long FTC (over two years) are rare in the private sector. About 50% of seasonal and 37% of casual employees are in the distribution, hotels & restaurant sectors.

**Objectives & options** The aims of the European Framework Agreement on Fixed Term Work are to: (a) improve the quality of fixed term work by ensuring the application of the principle of non-discrimination; and (b) establish a framework to prevent abuse arising from the use of successive fixed term contracts. We have carried out a cost/benefit analysis of the requirements of the Fixed Term Employees (Prevention of less favourable treatment) Regulations 2002.

**Benefits** We estimate the total benefits of the Regulations:

- **25,000-53,000** employees will benefit from the prevention of less favourable treatment by **£75-172 million**.
- Improved access to training will benefit fixed term employees by **£39-73 million** and will have benefits to business of **£23-146 million** per year from increased productivity.
- There are savings to the taxpayer estimated at about **£5 million** per year due to changes in Statutory Sick Pay provision.
- Measures to prevent abuses of FTC will benefit **5,000–13,000** fixed term employees by **£6-16 million**.
- Removing the redundancy waiver for fixed term contracts will benefit **43,000–120,000** employees by **£28-77 million**.

There may be other benefits, such as greater job security or greater willingness to work on a FTC, that are difficult to quantify.

**Compliance costs** The policy costs are largely the converse of the benefits, plus some additional employer National Insurance Contributions (NIC). We estimate:

- Preventing less favourable treatment will cost **£ 88-193 million**.
- Increased access to training for fixed term employees could cost **£ 39-73 million**.
- Additional costs from paying all FTC employees Statutory Sick Pay after day one of their employment are estimated to be up to **£7 million** per year.
- Measures to restrict abuses could cost **£ 7-18 million** (including costs for objective justification).
- Removing the redundancy waiver could cost **£ 28-77 million**.
- One-off administration costs for the implementation of the measures for business will be around **£2 million**.

The majority of costs and benefits are annually recurring.

**Small businesses** Fewer small businesses than larger establishments use FTC so the effect on small businesses as a whole will not be substantial.

**Other costs** There will be additional costs from Employment Tribunal applications of about £1.4 million for employers and £0.4 million to the Employment Tribunal Service. Additional costs will arise to the Advisory, Conciliation and Arbitration Service (ACAS).

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## **1. Title**

1. This regulatory impact assessment (RIA) considers the potential impact of the Fixed Term Employees' (Prevention of less favourable treatment) Regulations 2002 which will implement the European Council Directive concerning the Framework Agreement on Fixed Term Work concluded by UNICE, CEEP and the ETUC (hereafter referred to respectively as "the Regulations" and "the Directive"). The Government's 2001 public consultation on fixed term work discussed different options. This RIA assesses only the options which were chosen following on from the consultation process.

## **2. Objectives, Purpose and Intended Effect**

2. The measure has the dual objective of improving fairness and labour market efficiency. In its Explanatory Memorandum, the European Commission stated that the purpose of the Framework Agreement implemented via the Directive is to:
  - (a) improve the quality of fixed term work by ensuring the application of the principle of non-discrimination;
  - (b) establish a framework to prevent abuse arising from the use of successive fixed term employment contracts or relationships.<sup>1</sup>

### *Definition*

3. The Directive defines a fixed term worker as 'a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.' This RIA uses the Labour Force Survey (LFS) data to assess the number of fixed term employees who would be covered by the proposed Regulations. The LFS categorises non-permanent workers as those working for a fixed period or project, casual, seasonal, agency workers and those whose job was temporary in some other way. The framework agreement excludes agency workers. Therefore they have not been included in our calculations. Please see Annex 6 for more details of these definitions and why the Regulations apply to fixed term employees but some of the surveys deal with the broader category of workers.

### *Objective*

4. The Government wishes to ensure high rates of labour market participation by a diverse range of people, increase productivity and foster high-performance workplaces. In implementing the Directive, the Government aims to prevent any abuses resulting from a long succession of fixed term employment contracts and ensure fixed term employees are not receiving less favourable employment conditions than comparable permanent employees. At the same time, the Regulations are intended to preserve flexibility and to respect the variety of employment relationships in different sectors of the economy.

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<sup>1</sup> Clause 1 of the Framework Agreement.

5. The Government wishes to see a framework that facilitates the use of fixed term work where appropriate but not at the expense of worsening conditions for the marginal employee.
6. The regulations will improve FTC employees' access to training and therefore improve the skills base. This will have a positive effect on competitiveness overall and on productivity levels. They will also ensure that fixed term work pays, encouraging those who prefer this type of contract or are unable to take permanent employment to participate in the labour market.

#### *Risk assessment*

7. There are a great variety of individuals who work on a fixed term basis. Some fixed term employees have a very advantageous labour market position and are able to command high pay<sup>2</sup>, whereas others are more vulnerable - perhaps with limited opportunities.
8. The current situation can disadvantage fixed term employees in the following ways:
  - Some FTC employees have fewer advantages than their colleagues with open-ended contracts, or find that they are treated differently in other ways (e.g. have reduced access to training);
  - Research shows that the probability of receiving training is 12% lower for male fixed term employees and 7% for female fixed term employees than for their permanent colleagues.<sup>3</sup> These probabilities are even higher for those in seasonal/casual work (20% and 15%);
  - Those FTC employees who are employed on successive FTC rather than an open-ended contract may be required to waive their rights to statutory redundancy payments or be unable to acquire contractual rights accrued with length of service;
  - FTC employees and particularly those in seasonal and casual work often experience a lifetime earnings penalty compared to permanent employees. Those who are employed in temporary jobs for a number of years may never catch up with permanent employees;
  - FTC employees may be disadvantaged through indirect costs such as difficulties in raising credit from financial institutions;
  - Employees on FTC feel substantially less secure in their jobs than employees on permanent contracts.<sup>4</sup>
9. There is some concern in several European countries that abuses of fixed term contracts have increased in the last few years. FTC are not very common in the UK outside the public sector.<sup>5</sup>
10. Nonetheless, there is some suspicion in the UK that abuses have increased in recent years - in particular, what are arguably "permanent posts" may be filled with people on FTC. There is some statistical support for this suspicion. The small increase in the number of employees in temporary jobs has not been associated with areas where employment levels are volatile, and is almost entirely due to people being in temporary jobs for longer. A growing proportion of those people who have been in a temporary job for over two years are on short-term contracts (45% in 1995 and 49% in 1998). Overall the number of employees working for a fixed period has increased since 1994, but is down from the 1996 level. The same is the case for casual workers while the number

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<sup>2</sup> The Labour Force Survey suggests that some fixed term contract employees (those on a contract for a fixed period or a specific project) receive a higher average wage than permanent employees. LFS data on income is unreliable due to the method of self-assessment.

<sup>3</sup> Booth, Francesconi and Frank, *Temporary Jobs: Who gets them, what are they worth, and do they lead anywhere*, 2000.

<sup>4</sup> *Britain at Work, WERS98*, 1999

<sup>5</sup> For information on rights of temporary workers see *IDS Employment Europe 449*, May 1999 page 15, EC Employment Observatory *Tableau de Bord*, EC

of seasonal workers has increased by 37% to 1999. In 2000 and 2001 the number of seasonal workers was down again (see Annex 1).

### *Proposed remedy*

11. The purpose of the Directive is to improve the quality of fixed term work. It requires measures to ensure that:
  - FTC employees are treated no less favourably than comparable permanent employees (clause 4);
  - Measures are taken to prevent abuse of FTC (clause 5);
  - Information and employment opportunities shall be provided to FTC employees in the same way as to employees on open-ended contracts (clause 6);
  - Employee representative bodies should be provided with information on fixed term work in the establishment and fixed term employees should count towards the thresholds for constituting consultative bodies in organisations (clause 7).
  - In addition, the Government has decided to prevent pay and pension discrimination against FTC employees. We take the view that this is not a requirement of the Directive.
12. Most employers will not be affected by the Regulations. The Regulations should ensure that good practice is spread across all firms and fixed term employees can expect fair treatment no matter who they work for. Most fixed term employees are not treated less favourably than their colleagues with open-ended contracts and we are not aware of abuse being widespread. Employers generally use fixed term employees to facilitate numerical flexibility rather than to reduce costs.

### **3. Options**

13. It is unlikely that the problems identified will be reduced without government action. The European Social Partners have decided that regulation is the most appropriate way to remedy the problems of discrimination and abuse. The Government agrees with this view, as regulation is the most efficient method of reducing the existing market failure of asymmetric information, and positive externalities of training.
14. The draft RIA published with the 2001 public consultation discussed various options.<sup>6</sup> The policy choices included:
  - Pay: The Government consulted on whether pay and pensions should be included in the non-discrimination provisions of the Regulations, as it believes that due to the Directive's legal base it cannot cover matters of pay. Evidence of pay and pensions discrimination was received that the Government believes justifies preventing such discrimination. For more detail on the results of the consultation process see the Government Response to the 2001 public consultation on the EC Fixed Term Work Directive [insert hyperlink].
  - Whether equal treatment should be judged on a term-by-term basis or by comparing overall employment packages. The Regulations make particular provision for the use of the package approach, but still allow for employers to compare conditions term-by-term if they wish to do so. The benefit and cost assessments in this RIA are based on a term-by-term approach, which results in an overestimate of costs.<sup>7</sup>

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<sup>6</sup> The RIA to the 2001 consultation document is available on the DTI website

<sup>7</sup> To estimate the costs and benefits of a package approach is very complex, therefore a term-by-term approach was

- Coverage: The legislation will apply to all fixed term employees.<sup>8</sup>
- Limiting Abuse: It has been decided after consultation to restrict the use of successive FTC for a total period of 4 years after which objective justification for a further use of FTC will apply. The two other options discussed in the consultation document were limits of three and five years. While the former was more costly for business, the latter did not appear to provide sufficient protection for employees. It will also be possible to alter the statutory limit by collective or workforce agreement.
- The redundancy waiver currently used by many employers of employees on FTC of 2 years or more will be removed.

### *Issues of Equity and Fairness*

15. Fixed terms contracts are used for different reasons. In some instances they suit the individual, in others they are necessary to give business the flexibility needed. In some cases employees on fixed term contracts do not receive the same benefits as their colleagues on permanent contracts. With respect to training we have to consider that some fixed term employees are especially vulnerable to changes in the demand for labour. They therefore rely on training and development to be able to find another job after the termination of their contract. To be treated equally in terms of training is therefore an important issue to allow for an efficient and flexible labour market and to raise productivity.

### *Groups and numbers covered by the Regulations*

16. The information available is based on the LFS which is based on self assessment. One question asks whether the job held is permanent and if not in which way it is not. In the latter case the questionnaire offers several options such as seasonal work, work done under contract for a fixed period or for a fixed task, agency temping, casual work or some other way in which the job was not permanent. Annex 6 gives the exact questions in the LFS. We assume that the share of employees (as opposed to other types of workers) in these groups vary. This is due to the nature of work performed. It is difficult to give a precise estimate of the share of employees in each group. We therefore use ranges. This leads to a total number of employees affected between 1.1 and 1.3 million.

### *Distribution of FTC employees by gender and ethnic groups*

17. The majority of temporary employees are women, on average 54%. Table 1 shows that this share varies between the different types of FTC.

**Table 1: Gender split, in per cent**

	Fixed period or project	Seasonal	Casual	Other	Total
Male	47	45	44	42	46
Female	53	55	56	58	54

Source: LFS spring 2001

18. Members of ethnic minorities are more likely to work on a temporary basis than white employees. 5.5% of white employees are on FTC, compared to 9.2% of Pakistani/Bangladeshi employees.

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used even though this leads to an overestimate of costs.

<sup>8</sup> For details on the result of the consultation process see the Government Response to the 2001 public consultation on the EC Fixed Term Work Directive.

#### 4. Expected Benefits

##### *Identifying the benefits*

19. The Regulations will directly benefit:
- Fixed term employees who are treated less favourably than their permanent equivalents
  - Fixed term employees whose contracts are successively renewed beyond 4 years and where the further use of a FTC can not be objectively justified.
20. We estimate (based on the Labour Force Survey, spring 2001) that:
- (a) The number of FTC employees working alongside people doing similar jobs as comparators will differ between the 4 groups of FTC employees. The total number is between 544,000 and 807,000 (employees).<sup>9</sup> The number receiving less favourable treatment is uncertain but it is questionable whether the Regulations will result in changes for all of them, because there may be justifiable reasons for different treatment or they may be compensated in other ways within the remuneration package.
- (b) While we cannot put a precise figure on those who have their contracts successively renewed there are more than 200,000 FTC employees who have been in their job for longer than two years.
21. The measures in the Regulations should not inhibit employers from using FTC where work is of a fixed term nature. In general, fixed term contracts suit both the employer and employee and help promote a flexible labour market, which allows the economy to adjust more rapidly to changes in demand and reduce skill mismatch. The measures in the Regulations may lead some job seekers to be less inhibited about taking on fixed term work, knowing that their rights are secured and increase the potential supply of FTC employees.

##### *Long-term benefits to business*

22. One of the main areas where discrimination occurs is in reduced access to training. In the long run, improved access to training will have benefits for business as well as for employees. Training will also reduce the probability of FTC employees terminating their employment contracts and thereby reduce recruitment costs.

##### *Quantifying and Valuing Benefits*

23. The quantification of benefits (and costs) uses data from the DTI study commissioned in 1998 and the LFS. The people interviewed will not always have an identical concept of FTC nor will their definition coincide with the definition of the Regulations. The survey, carried out by BMRB, investigated differences in the terms and conditions of employees on FTC and comparable employees, looking at pay, non-wage benefits and treatment.<sup>10</sup> It found some evidence of discrimination between fixed term employees and permanent employees, but that it was not extensive. The survey found that only 19% of establishments had any fixed term employees. Approximately 50% to 63% of employees working for a fixed period of time are doing the same job as a permanent member of staff. Applying that to the LFS figures for the number of people on

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<sup>9</sup> See Annex 6 for detail.

<sup>10</sup> Part-time and Fixed term Contract Staff, A Survey of Employers to be published in 2002.

contracts for a fixed term or fixed task gives a total of between 396,000 and 499,000 employees who work alongside someone with an open-ended contract. Including seasonal, casual and other employees the total numbers affected are between approximately 544,000 and 807,000 employees. See Annex 6 for details.

*Principle of non-discrimination*

24. From the LFS, we know that there are between 1.1 and 1.3 million employees working for a fixed period of time in the UK<sup>11</sup>. These include employees who work for a fixed period or on a specific project, seasonal, casual and other employees whose work is temporary in any other way. Annex 1 shows the distribution over the four types of employees in detail. This range might overstate the number of fixed term employees as some are probably employed by an employment agency rather than the organisation where they work (and are therefore excluded from the scope of the Directive). We shall base our calculations on the LFS measure of temporary employment since it has the benefits of consistency and transparency.
25. The following paragraphs look at how these employees will be affected by each of the main parts of the Regulations. The results are summarised in Table 2 below. Some people may stand to benefit in more than one way. See Annex 2 for details.

**Table 2: Value of benefits to employees with fixed term contracts**

<b>Change</b>	<b>Numbers benefiting</b>	<b>Financial benefit £ million</b>
<b>Non-wage discrimination</b>		
Training	52,000 – 98,000	39 – 73
Other benefits	31,000 – 55,000	21 – 45
Pay	27,000 – 40,000	21 - 20
Pensions	55,000 – 82,000	33 - 97
<b>Total</b>		<b>114 - 235</b>

26. It is important to define the terms of discrimination. There are two possibilities

*(i) Term-by-term comparison*

27. In this case every single employment condition of a FTC employee is compared to the equivalent individual conditions of a permanent comparator. This approach ensures that the FTC employee has the same holiday entitlements, training etc as the comparator. This approach is analysed in this RIA. The consultation process revealed that employers valued having the flexibility to chose between a term-by-term approach and package approach (see below), consequently the Regulations provide for employers to use either.

*(ii) Package approach*

28. This approach compares the entire employment package as a whole. Worse conditions in one area could be justified if the employee is treated better in other areas.
29. Both approaches have advantages and disadvantages. While the term-by-term approach offers transparency it may leave less flexibility for employees and employer to negotiate their conditions. A package approach on the other hand needs a valuation of different benefits, which may increase the cases of dispute, however it has the advantage of allowing employers to ensure equal treatment

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<sup>11</sup> LFS spring 2000.

by paying a higher overall package and possibly allowing employees or unions to negotiate better employment packages. The Regulations provide for both the term-by term and package approaches to be used.

### *iii) Qualification*

30. The DTI's survey found that fixed term employees were excluded from 10% of benefits given to their permanent comparators. In many cases the exclusion of benefits may be objectively justified (e.g. loans that can be paid back over many years), or may arise because people have to serve a certain time to qualify (e.g. enhanced maternity leave). In others cases FTC employees may be compensated with other benefits. We estimate that the number of fixed term employees who stand to benefit from measures to address discrimination in (non-wage) benefits is between about 25,000 and 53,000 employees. We have put a value of about £848 on the missing benefits (see Annex 2, table A 5) so the total value of the benefits to employees is about **£21 and 45 million**.
31. The regulations also prevent employers from treating fixed term employees less favourably in terms of pay and pensions. This will benefit fixed term employees by between **£54 and 127 million** (see annex 7).
32. Training is one of the main areas affected by the Regulations. We estimate that this benefits about 52,000 – 98,000 employees. Benefits arise for employees as their market value increases. We estimate these to be between **£39 – 73 million**. Additional benefits of **£23 – 146 million** arise for employers because of rising productivity.

### *Statutory sick pay (SSP)*

33. Currently, employees on FTC of 3 months or less are not necessarily entitled to SSP. The Regulations will give them the right to claim SSP on the same basis as permanent and other FTC employees.

### **Employer costs**

34. According to the spring 2001 Labour Force Survey, 250,000 employees (around 1% of the labour force) are on short-term contracts (less than 3 months).
35. From the Lifetime Labour Market Database (LTLMD), we know the number of recipients of, and average amount of, SSP.
36. Using the information above we can calculate the number of employees on short-term contracts who are likely to receive SSP, and hence the cost to employers of extending SSP to employees with short-term contracts. This amounts to just over £7 million. We estimate that there will be an additional 40,000 SSP claims per annum due to the above change in qualifying conditions.

### **Employees' benefits**

37. Employees will benefit by increased payments in the case of prolonged sickness absence. It has not been possible to quantify these benefits.

### **Taxpayer savings**

38. Introducing the above policy change has two effects. Firstly, it moves some short-term contract employees from Incapacity Benefit (IB) to SSP, creating a saving for the taxpayer (though there is also an associated cost for the taxpayer in the form of reimbursing a proportion of SSP payments).

The net impact is a saving for the taxpayer and increased costs for employers of short-term contract employees. The estimated savings are approximately £5 million.<sup>12</sup>

### *Options Regarding the Prevention of Abuse*

#### *Improved security*

39. Perhaps the most important benefit to FTC employees arising from measures to prevent abuse of FTC will be increased security. Nearly all other EU countries already have legislation in place to prevent abuses of FTC.<sup>13</sup> The consultation process revealed that limiting the use of successive fixed term contracts for 4 years combined with employers being required to produce a written statement objectively justifying the use of a further FTC will prevent the abuse of successive fixed term contracts, improving the security of FTC employees while maintaining labour market flexibility. The estimated costs to employers of between **£6 and 16 million** result from extra redundancy payments to employees who had been made permanent after their FTC ran out and subsequently have been made redundant. See Annex 3 for details.

#### *Removal of the Redundancy Waiver*

40. Employees on FTC of over 2 years duration are currently able to sign away their right to redundancy payments at the end of their contract. Many of them may feel obliged to do so due to their vulnerable employment situation. The removal of this waiver will benefit employees whose contract terminates for reasons of redundancy during year 2 to year 4 or their FTC.<sup>14</sup>
41. In the light of consultation we have decided to abolish the redundancy waiver. Abolishing this practice may increase the chances of fixed term employees being hired on a permanent basis. A maximum of between **43,000 and 120,000 employees** will benefit by between **£28 and 77 million** from this.

## **5. Sectors affected**

### *Industrial and public sectors*

42. Table 3 shows the number of fixed term employees by industry sector. It is possible that this may overstate the total numbers if, as we suspect, some agency workers are actually recorded as FTC.

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<sup>12</sup> Estimated benefits are £ 4.5 million. This estimate is subject to substantial uncertainties. Estimates are provided by DWP.

<sup>13</sup> *European Industrial Relations Review*, May 1999

<sup>14</sup> The use of FTC will be limited to a total of four years.

**Table 3: The Number of temporary employees by Sector, UK**

Industry Sector	Fixed period	Seasonal	Casual	Other
Agriculture & fishing <sup>1</sup>	*	*	*	*
Energy & water	12,000	0	*	*
Manufacturing	76,000	*	19,000	24,000
Construction	37,000	*	11,000	10,000
Distribution, hotels & restaurants	36,000	30,000	117,000	39,000
Transport & communication	30,000	*	15591	*
Banking, finance & insurance etc.	117,000	*	25,000	18,000
Public admin, education & health	435,000	*	89,000	79,000
Other services	442,000	10,000	33,000	15,000
All Industries	793,000	67,000	315,000	194,000

Source: LFS spring 2001

\* = fewer than 10,000

<sup>1</sup> The total number of temporary employees in this sector, which also includes fishing, was estimated to be about 22,000 in Summer 2000 and 20,000 in Summer 2001. However, it is possible that the LFS may underestimate the level of casuals in agriculture. Data from the Department of the Environment, Food and Rural Affairs' Agricultural and Horticultural Censuses shows that there were around 64,000 casual/gang workers employed in the agricultural and horticultural sector at June 2000 and 63,000 at June 2001.

43. Table 3 shows the number of seasonal and casual workers. The inclusion of employees who work on a seasonal or casual basis shifts the burden between the sectors slightly. 117,000 casuals, i.e. 39%, work in the distribution, hotels and restaurant sector. The distribution of employees over industries will have an impact on the distribution of benefits and costs experienced by industries.

**Table 4: FTC by sector, in percentage**

Industry Sector	Fixed period	Seasonal	Casual	Other
Agriculture & fishing	*	*	*	*
Energy & water	1.5	0.0	*	*
Manufacturing	9.6	9.3	7.0	12.2
Construction	4.6	1.2	3.1	5.0
Distribution, hotels & restaurants	4.6	45.1	39.3	20.1
Transport & communication	3.8	6.4	4.8	3.1
Banking, finance & insurance etc.	14.7	4.6	6.1	9.3
Public admin, education & health <sup>1</sup>	54.8	11.2	25.4	40.9
Other services	5.6	14.8	12.2	7.7

Source: LFS Spring 2001

\* = fewer than 10,000

<sup>1</sup> Public administration: 85,000 (19% of public sector); Education: 244,000 (56% of public sector); Health and social work: 106,000, (24% of public sector).

44. From 1994 to 2001 the overall number of employees on a fixed term contract has increased by 100,000 (7%). This overall increase overshadows a rather varied development between the types of temporary work. This may be due to definition and self-assessment in the LFS. Annex 1 presents the detailed development within different sectors.

**Table 5: Number of workers by type over time**

Fixed period					Casual				
1994	1996	1999	2000	2001	1994	1996	1999	2000	2001
751000	816000	805000	797,000	793,000	308000	325000	316900	324,000	315,000

Seasonal					Other				
1994	1996	1999	2000	2001	1994	1996	1999	2000	2001
77000	76000	105300	67,000	67,000	154,000	165,000	166,000	202,000	194,000

Total				
1994	1996	1999	2000	2001
1,290,000	1,382,000	1,393,000	1,390,000	1,396,000

Source: LFS, 1994, 1996, 1999 and 2000

45. \*The distribution of the three types of employees over industries has hardly changed (see Annex 1 for detail).
46. The measures in the Regulations will guarantee rights for all of these employees, regardless of whether or not they benefit directly from any single measure. But table 4 shows that certain sectors - those that use fixed term employees more extensively - are more likely to be affected by the Regulations than others. In particular, the public sector accounts for about half of all employees working for a fixed period. This disproportionate effect is compounded by the results of our survey, which suggests that the public sector is more likely to discriminate against fixed term employees on non-wage benefit entitlements than the private sector. Overall, in 3% of cases, employers said that they had at least one difference between fixed term and permanent workers in benefit entitlement. This compares to 11% in public administration, 5% in education and 7% in health and social work.

#### *Charities and the voluntary sector*

47. Approximately 35,000 fixed term employees work for charities. Including seasonal, casual and other employees adds another 30,000. These are approximately 5% of all fixed term employees, of which 1 percentage point accounts for seasonal and casual employees. See Table A 6 in Annex 2 for details.

## **6. Estimated Compliance Costs**

### *Employers affected*

48. The survey carried out in 1998 by BMRB on behalf of the DTI found that only 19% of establishments with at least one employee had some fixed termers. The use of fixed term employees is much less common in small establishments. Of establishments with 50 or more employees 43% used fixed term employees.<sup>15</sup>

### *Elements of costs*

49. The main effect of the Regulations will be increasing the benefits given to employees. There is a transfer from employers to employees, raising labour costs. The main policy cost to employers can therefore be derived from the benefits to employees identified above. The following paragraphs

<sup>15</sup> That is comparable to the findings of WERS 1998 which suggest that 44% of workplaces with 25 or more employees use FTC (*The 1998 Workplace Employee Relations Survey First Findings* table 3, p 8).

take the issues in turn. Then we consider the potential implications of limiting the use of renewal of FTC. The only implementation costs involve the extra costs of handling redundancies rather than simply terminating contracts. This will be mostly done by changes in existing pay-roll systems which lead to one-off costs. Calculations are presented in Annexes 2 and 3.

#### *Non-discrimination*

50. The DTI/BMRB survey revealed that fixed term employees were excluded from 10% of benefits given to their permanent comparators. The majority of employers of fixed term employees therefore will not face compliance costs to end discrimination. However for those that do the aggregate cost was estimated to be **£27 – 57 million** (see Annex 2 for calculations). The requirement to provide access to training on the same terms as to permanent employees may pose more difficulty. Research done on training showed that the rates of discrimination are between 7% and 20%.<sup>16</sup> The cost of **training** is estimated above to be **£39 - 73 million** (see Annex 2 Table A 4).
51. Since wages are to be included, the wage bill increases by between **£21 and 30 million** for employers. Adding employers' non-wage labour costs leads to total additional labour costs of **£28 and 39 million**. For pensions we estimate costs to be **£ 33-97 million** (see Annex 7 for calculations), and there will be some additional administrative costs in accommodating people on short contracts in occupational pension schemes.

#### *Measures to prevent abuse*

52. The Regulations limit the use of fixed term contracts to 4 years. Any further use of a non-permanent contract will have to be objectively justified.<sup>17</sup> To analyse the costs of this restriction we assume that fixed term employees let go by their employer after 4 years will be entitled to redundancy payments. We estimate that this will add between about 5,000 and 13,000 to the number of fixed term employees entitled to redundancy payment (currently these separations are classified as job terminations) at a cost of **£6 – 16 million** (see Annex 3).<sup>18</sup> As well as redundancy payments there will be some additional administration costs in changing existing payroll systems which we estimate to be a maximum of **£2 million**, applying to those companies who have a payroll system (see Annex 3). Apart from this there are no additional administrative costs in having permanent rather than fixed term employees (their statutory employment rights are generally no different). This is predominantly a cost for the public sector rather than the private sector.

#### *Objective justification*

53. The use of FTC for more than four years will have to be objectively justified. We estimate that the objective justification which would mainly consume management time will cost between employers between **£1 and 2 million** assuming (which is improbable), that employers objectively justify the use of all of their FTC after four years.

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<sup>16</sup> i.e. share of FTC who received less training than their permanent comparators.

<sup>17</sup> We assume for reasons of simplicity that contracts only cover whole year periods.

<sup>18</sup> The additional redundancy payment will have to be made to employees who are transferred to a permanent contract as after four years no further FTC can be used (unless it can be objectively justifiable). We assume that all those who receive RP have been in employment for one more year. Calculation: 5,000 employees x £240 x 5 = £6 million and 13,000 employees x £240 x 5 = £15.6 million

### *Removal of the redundancy waiver*

54. The abolition of the redundancy waiver which currently allows fixed term employees to sign away their right to redundancy payments at the end of the contract (if the contract is ended for reason of redundancy) will further reduce discrimination.<sup>19</sup> The costs to employers will be the redundancy benefits paid to employees on contracts of between 2 and 4 years<sup>20</sup> at the end of their contract of between **£28 and 77 million**. These are direct benefits for between **43,000 and 120,000 employees**. We assume that this does not lead to additional administrative costs.

### *Information on employment opportunities*

55. This clause requires employers to provide employees on FTC with information about vacancies that become available. The aim is to give them an opportunity to secure permanent positions. We do not believe that this should cause employers any difficulties. Many employers use FTC as a way of screening employees before offering open-ended contracts. Research carried out by the Institute for Employment Studies in 1995 found that a fifth of employers surveyed deliberately use some of their FTC as trials for employees who could become permanent.<sup>21</sup> Where these practices do not already exist, we do not believe that providing fixed term employees with information and employment opportunities will cause problems, so any costs involved will be negligible. There may be some complication where different entry standards are applied to FTC and permanent recruits (where fixed term employees would have to compete with external candidates).
56. Both fixed term public consultations suggested that a requirement to provide information on permanent vacancies would not cause problems.
57. The LFS suggests that only 21% of employees on fixed term contracts do not want a permanent job. 39% of fixed term employees work in temporary employment because they could not find a permanent job (LFS Autumn 1999) - although not all of them would want to work permanently in the job they do on a FTC. It is hoped this measure, combined with better access to training, will improve their chances of obtaining a permanent job. However, we have no evidence that employers do not already offer permanent jobs to workers on FTC and cannot predict its effect on job offers.

### *Information and consultation*

58. The cost of providing information to existing workers' representative bodies about fixed term work in the undertaking should be very small. The requirement to take fixed term employees into consideration in the calculation of the threshold above which workers' representative bodies is required in national and Community law and will have little effect. Thresholds for establishing European Works Councils already include fixed term employees. (The number of cases where it will make any difference is likely to be very small.)

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<sup>19</sup> Workers who are not employees are not entitled to redundancy payments. The calculation for the options to prevent abuse as well as for the removal of the redundancy waiver therefore consider only employees.

<sup>20</sup> Two years is the qualifying period of RP. Four years is the upper limit for the calculation as this is the longest period for which FTC can be used (if no objective justification can be provided). The costs for redundancy after year four are covered under the costs for the limitation of the use of FTC.

<sup>21</sup> *Labour Market Trends* p403 September 1996 - article based on IES report 311 Atkinson,J., Rick,J., Morris,S., Williams,M (1996) *Temporary Work and the Labour Market* IES Report 311

*Total recurring costs and offsetting benefits*

59. Table 6 summarises the total costs to business and the public sector.

**Table 6: Recurring (gross) compliance costs**

Change	Total £ million (year of introduction)	Business £ million (year of introduction)	Public Sector £ m
<b>Discrimination</b>			
Training	39 – 73	15 – 28	24 – 45
Other benefits	27 – 57	11 – 22	16 – 35
Pay	28 – 39	11 – 15	17 – 24
Pensions	33 - 97	13 – 37	20 – 60
Inclusion in consultation	Nil	Nil	Nil
Providing information on vacancies	Nil	Nil	Nil
<b>Total - all discrimination*</b>	<b>127 – 266</b>	<b>50 – 102</b>	<b>77– 164</b>
<b>Limiting abuse</b>			
Limited renewals	7 – 18	3 – 7	4 – 11
<b>Removal of redundancy waiver</b>			
	28 - 77	11 - 29	17 - 48
<b>Total</b>	<b>162 - 361</b>	<b>64 - 138</b>	<b>98 - 223</b>

Number in brackets: workers

All figures rounded to full million

\*differences due to rounding

60. This cost will be partially offset by some benefits to employers. Fixed term employees tend to have a higher quit rate and lower commitment. This is one reason why many employers do not use fixed term employees. Equal treatment and greater security will lead to greater commitment and productivity (for instance, making it worthwhile to undertake job specific training). The additional benefits to business due to increased training are estimated to be between **£23 and 146 million**. Many employers that use FTC provide equally favourable terms and conditions, recognising the benefits of doing so. However, where employers do provide less favourable terms we must presume that the perceived benefits are not sufficient to outweigh the costs (though there may be a tendency to see the costs more clearly than the prospective benefits). Nonetheless these benefits should be taken into account in assessing the overall recurring costs.

61. The effect of the changes to end discrimination will be to raise the relative cost of fixed term employees which may make them less attractive, leading to employers shifting to open ended contracts or to reducing employment. Surveys that examine the reasons for the use of FTC have revealed that relative cost plays a minor role compared with the need to meet peaks in demand and staff absences.<sup>22</sup> Applying the principle of non-discrimination is therefore unlikely to lead to a large shift to open-ended contracts, but limitations on renewals might have such an effect.

## 7. Small Businesses

62. It is unlikely that the Regulations will have much impact on small businesses taken as a whole. The DTI/ BMRB survey shows that very few small businesses make use of fixed term workers (15% of establishments employing 1-10 people use FTC, compared to 36% of establishments employing 100 or more). Furthermore establishments with few employees are less likely to offer non-wage

<sup>22</sup> In the 1996 survey by IES 6% mentioned wage costs, *Labour Market Trends* September 1996 page 405.

benefits (such as pensions) than establishments with large numbers of employees, hence there are fewer areas for potential discrimination.

## 8. Other Costs

### *Enforcement Costs*

63. As with any anti-discrimination legislation this is likely to give rise to applications to Employment Tribunals. This means that there will be some additional costs for ETS and ACAS. We use the number of applications resulting from the Part-time Workers' Regulations as a benchmark. There have on average been 280 cases per month since the introduction of the part-time workers regulation in July 2000. The number peaked in January this year. There are only between 1.1 and 1.3 million employees on fixed term contracts compared to about 6 million part-time employees. We therefore estimate that about 700 additional ET applications will be made per year under the Fixed Term Regulations.<sup>23</sup> These additional claims will cost employers about £1.4 million and the ETS about £ 0.4 million.<sup>24</sup> The Regulations are unlikely to have a large impact on either ETS or ACAS. The legislation is also likely to create demand for advice leading to extra calls to the ACAS helpline.

## 9. Results of Consultations

64. There has been an extensive consultation process. The government consulted on the Fixed Term Work Directive in 2001 and on the draft Fixed Term Employees' (Prevention of less favourable treatment) Regulations in 2002. The 2001 consultation discussed the options for transposing the Fixed Term Directive and the 2002 consultation sought technical comments on the draft Fixed Term Regulations. Full Government responses to both the consultations are available on the DTI website, however below is a brief summary of the main points.

- The majority of respondents were in favour of a comparator definition similar to that applied in the Part-time Workers Regulations.
- The package approach was favoured by about half of those responding but the argument in favour of flexibility was convincing. The Regulations allow for a package or term-by-term approach when assessing a fixed term employee's treatment, however provide in particular that fixed term employees will not be deemed to be treated less favourably provided their overall employment package is not less favourable than that of a comparable permanent employee's (unless objectively justified).
- The 2001 consultation produced evidence of pay and pensions discrimination that the Government believes justifies the use of primary legislation to prevent such discrimination. The consultation results supported those revealed by research commissioned by the DTI in 1998.
- A small majority of respondents were in favour of the abolition of the redundancy waiver.
- There was support for the restriction of the use of FTCs to a fixed amount of years and for the use of objective justification.
- Few respondents felt there was a case for including all fixed term workers instead of only employees. It has therefore been decided that the regulations will apply to fixed term employees.

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<sup>23</sup> 277 applications per month on the Part-time Workers' Regulations. These are 3,324 per year. There are 6 million part-timers compared to 1.1 – 1.3 million FTCs. The proportionate number of FTC applications is therefore 720.

<sup>24</sup> 720 applications x £2,000 (average costs per ET application to ET) = 1.44 million. Costs to ETS are £540 per case. Total costs are therefore 720 x £540 = £388,800 per year.

## **10. Evaluation and monitoring**

65. The Government is committed to monitor and evaluate the impact of any regulation introduced. Internal or external research will be commissioned in the appropriate time after the introduction of the Regulations.

## **11. Summary of costs and benefits**

66. The Regulations are expected bring considerable benefits to fixed term employees in both improved treatment and greater security. Most employers will not be affected by the anti-discrimination provisions. Where the Regulation leads to increased training there is the opportunity for net benefits. Limitation on renewal/extension of fixed term contracts may be an inconvenience to employers, but in legal terms there are no additional costs to having permanent rather than fixed term employees, aside from the right to redundancy payment on termination of employment which the regulation will change. The effect of this will be felt most in the public sector.

## **12. Enforcement and Sanctions**

67. The Regulations on fixed term work will allow individuals to seek a remedy for any infringement of their rights through an Employment Tribunal provided they have use the appropriate grievance or disciplinary procedure first.<sup>25</sup>

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<sup>25</sup> Disciplinary and grievance procedures are currently introduced via the employment bill.

**ANNEX ONE: STRUCTURE OF THE FIXED TERM SECTOR OF THE LABOUR MARKET OVER TIME**

**Table A 1: Number of employees (LFS definition) working for a fixed period of time or on a set project**

Industry Sector	Fixed period					Casual				
	1994	1996	1999	2000	2001	1994	1996	1999	2000	2001
Agriculture & fishing	*	*	*	*	*	*	**	*	*	*
Energy & water	16000	13000	15900	13,000	12,000	*	0	*	*	*
Manufacturing	78000	97000	81500	68,000	76,000	35000	36000	22300	23,000	19,000
Construction	43000	36000	45900	44,000	37,000	*	*	14500	10,000	11,000
Distribution, hotels & restaurants	46000	50000	45000	35,000	36,000	115000	110000	117500	127,000	117,000
Transport & communication	22000	35000	37200	30,000	30,000	17000	14000	17800	16,000	15591
Banking, finance & insurance etc.	82000	99000	114900	106,000	117,000	21000	30000	29300	20,000	25,000
Public admin, education & health	401000	434000	402000	441,000	435,000	71000	77000	79100	82,000	89,000
Other services	59000	49000	58200	54,000	442,000	36000	44000	36400	35,000	33,000
All Industries	751000	816000	805000	797,000	793,000	308000	325000	316900	324,000	315,000

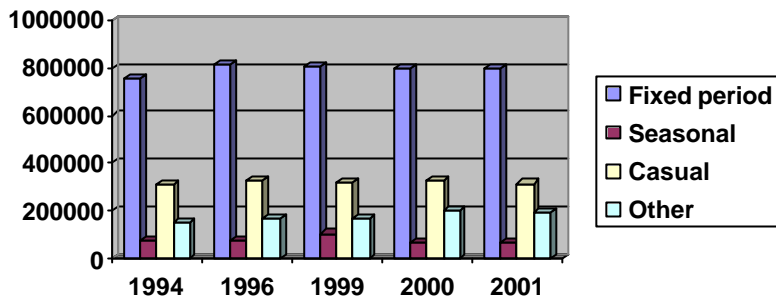
Industry Sector	Other					Seasonal				
	1994	1996	1999	2000	2001	1994	1996	1999	2000	2001
Agriculture & fishing	*	**	*	*	*	*	*	10,300	*	*
Energy & water	*	**	*	*	*	0	0	0	0	0
Manufacturing	28,000	25,000	22,000	28,000	24,000	*	*	12200	*	*
Construction	*	11,000	*	10,000	10,000	0	**	*	*	*
Distribution, hotels & restaurants	26,000	29,000	31,000	34,000	39,000	33,000	30,000	53,600	29,000	30,000
Transport & communication	*	*	*	*	*	*	**	*	*	*
Banking, finance & insurance etc.	13,000	16,000	20,000	25,000	18,000	*	*	*	*	*
Public admin, education & health	60,000	58,000	70,000	57,000	79,000	*	*	*	*	*
Other services	*	15,000	*	*	15,000	16,000	15,000	17,900	13,000	10,000
All Industries	154,000	165,000	166,000	202,000	194,000	77,000	76,000	105,300	67,000	67,000

Source: LFS Autumn 1994, 1996, 1999, 2000 and spring 2001

\*= fewer than 10,000

**Figure A 1**

**The number of employees by type**



Source: LFS 1994, 1996, 1999, 2000

Table A 2 shows the distribution of the three types of employees in percentages. The distribution differs for the four groups. Workers working for a fixed period of time are used most in the public administration, health and education sector, while seasonal and casual workers are concentrated in the distribution, hotel and restaurant sector.

**Table A 2: Distribution of employees working for a fixed period of time or on a set project in percentages**

Industry Sector	Fixed period					Casual				
	1994	1996	1999	2000	2001	1994	1996	1999	2000	2001
Agriculture & fishing	0.5	0.4	*	0.2	0.1	1.9	2.2	*	1.9	1.6
Energy & water	2.1	1.6	2	1.6	1.5	0.6	0.0	*	0.2	0.4
Manufacturing	10.4	11.9	10	8.6	9.6	11.4	11.1	7	7.0	6.0
Construction	5.7	4.4	6	5.5	4.6	1.9	2.2	4.5	3.1	3.4
Distribution, hotels & restaurants	6.1	6.1	5	4.4	4.6	37.3	33.8	37.1	39.3	37.1
Transport & communication	2.9	4.3	5	3.7	3.8	5.5	4.3	5.6	4.8	4.9
Banking, finance & insurance etc.	10.9	12.1	14	13.3	14.7	6.8	9.2	9.2	6.1	7.9
Public admin, education & health	53.4	53.2	50	55.3	54.8	23.1	23.7	25	25.4	28.3
Other services	7.9	6.0	7	7.1	5.6	11.7	13.5	11.5	12.2	10.4

Industry Sector	Seasonal					Other				
	1994	1996	1999	2000	2001	1994	1996	1999	2000	2001
Agriculture & fishing	7.8	9.2	9.7	10.7	6.7	*	*	*	1.3	0.5
Energy & water	0.0	0.0	*	0.0	0.0	1.2	1.6	1.0	1.3	1.2
Manufacturing	9.1	11.8	11.6	9.7	9.3	18.4	15.0	13.2	13.8	12.2
Construction	0.0	2.6	*	1.3	1.2	5.1	6.9	4.2	4.8	5.0
Distribution, hotels & restaurants	42.9	39.5	50.9	43.4	45.1	16.7	17.6	18.7	16.7	20.1
Transport & communication	6.5	7.9	*	5.1	6.4	4.5	3.6	3.9	3.7	3.1
Banking, finance & insurance etc.	5.2	3.9	5.7	2.0	4.6	8.7	9.9	11.9	12.3	9.3
Public admin, education & health	6.5	5.3	5	6.1	11.2	38.8	35.3	42.3	40.4	40.9
Other services	20.8	19.7	17	21.5	14.8	6.3	8.9	4.2	5.7	7.7

Source: LFS Autumn 1994, 1996, 1999, and spring 2000

## ANNEX TWO: APPLYING THE PRINCIPLE OF NON-DISCRIMINATION

### Training

Research by Booth et al shows that employees working for a fixed period as well as those in casual/seasonal work have less access to training.<sup>26</sup> It is likely that in many cases the FTC employee is employed because they already have the specialist skills - surveys identify that as a major reason for using FTC.<sup>27</sup> The amount of training differs between types of employees and gender. We assume that a day of training costs £ 250. We further assume that this is equal to the value for the employee. This will diminish over time at a constant rate. We also consider that the provision of training can generally be understood as a contractual term and condition.

**Table A 3: FTC by gender and type  
Number of employees affected by regulation**

	Seasonal work	Contract for fixed period, fixed task	Casual work	Not permanent in some other way	Total
male min	9,000	111,000	42,000	24,000	230,000
male max	17,000	210,000	79,000	46,000	435,000
female min	11,000	127,000	53,000	34,000	266,000
female max	21,000	239,000	100,000	64,000	504,000

The availability of training differs between male and female employees and between the types of FTC. Following the research by Booth et al male workers on contracts for a fixed period receive 12% less training than their permanent colleagues. For casual/seasonal workers the difference is 20%. For female workers the difference is 7% and 15% respectively.

From WERS98 we know that 62% of full time employees received some training. 21 percentage points of these received more than 5 days training per year. We assume that the average of training received by this group is 10 days. 41 percentage points receive between 1 and 5 days of training. The average amount of training received by full time employees in the latter group is 3 days. Weighting these by the size of the two groups (i.e. fixed period and casual/seasonal) the average of training received is 3 days per annum.

Using the reduced access of training to FTC employees leads to the following losses in training:

**Table A 4: Training days & value lost due to discrimination (employees)**

	Fixed period	Casual/seasonal/other
Number of employees benefiting	22,000 – 42,000	30,000 – 56,000
Total days lost	67,000 – 126,000	89,000 – 168,000
Value of training lost in £ million*	17 – 31	22 - 42

\* assume the value of 1 training day to be £250.--

In total the benefits to employees and costs to employers will be between **£39 and 73 million**. The total number of employees benefiting is between **52,000 and 98,000**.

<sup>26</sup> The research commissioned by the DTI leads to similar results.

<sup>27</sup> Heather,P., Rick,J., Atkinson,J., Morris,S. (1996) Employers' use of temporary workers, *Labour Market Trends*, September. Page 405

### *Recurring benefits for business*

Considering the lifetime of these Regulations to be 20 years, we also have to include the benefits business will receive from the increased training its FTC employees receive. The increased training opportunities for FTC employees may also positively increase the probability that an employer will change their contract into a permanent contract.

Evidence on the effects of training on the employee's productivity is mixed. Wage premiums are one measure for the benefit of training. Booth, Francesconi and Zoega give a wage premium for male workers of 13.3%. This premium is influenced by other circumstances such as union membership. To give a more realistic estimate we assume a range of premiums between 3 and 10%. We further have to assume that the return to a specific training course will diminish over time. On the other hand the additional training provided after the introduction of the Regulations will lead to a continuous flow of training. To keep the analysis simple we assume that the loss of skills due to time and the additional skills of future training are identical. We can therefore assume a constant flow of benefits from training discounted by the interest rate. Wages differ between male and female employees and between female full-time and part-time employees. The calculation takes these differences into account.<sup>28</sup> Between 52,000 and 98,000 employees will benefit. This leads to improved productivity at a value of between **£23 and £146 million**.

### *Other benefits*

The BMRB survey asked about a range of 20 benefits available to fixed term contract staff and their comparators. A total of 493 benefits were provided in a sample of 60 workplaces (with 1.3 workgroups per workplace). This means that a typical benefits package for a FTC comparator consisted of approximately 6 benefits. Excluding occupational pensions and training (costed elsewhere), this leaves four non-wage benefits typically available to a FTC comparator.

We took the four most commonly available non-wage benefits available to full-time comparators and calculated the value of this non-wage benefits package.

**Table A 5 Value of benefits (1998 prices)**

	<i>Benefit to ftc employee '98 prices (survey)</i>	<i>Benefit to ftc employee 2000 prices<sup>5</sup></i>	<i>Cost to employee '98 prices (survey)</i>	<i>Cost to employee 2000 prices</i>
Holiday pay <sup>1</sup>	400	449	500	560
Bank holiday pay <sup>2</sup>				
Special leave <sup>3</sup>	50	56	62	69
Sick pay above statutory minimum <sup>4</sup>	305	343	400	449
Total benefits package for FTC	755	848	962	1,080 <sup>6</sup>

<sup>1</sup> & <sup>2</sup> Benefit is cost of fixed term employee on average net pay moving from statutory minimum (4 weeks including public holidays) to amount of leave commonly provided for full time employees (4 weeks plus public holidays) = 249 x 1.6

<sup>3</sup> One day at average fixed term wage rate so benefit to employee = 249/5 and cost to employer = 249/5 x 1.24

<sup>4</sup> 8 days sick pay per annum (*Labour Market Trends*, August 1999). SSP is currently £59.55 per week, benefit to employee is difference (8 x 50)-(1.6 x 59.55) = £305; cost to employer is (8 x 62)-(1.6 x 59.55) = £400

<sup>5</sup> The survey was conducted in 1998. The first column give the value of the benefit as defined in that year. To

<sup>28</sup> Average weekly wages are: £339.10 for a manual male employee (here used for seasonal/casual/other). £446.90 for a male employee over all occupations. £222.50 for a female full-time manual (here used for seasonal/casual/other) and £94.20 for a part-time female manual. £331.80 for a female full-time over all occupations and £129.80 for a female part-time over all occupation. NES 2000, in 2000 prices.

reach the value for 2000 prices a discount rate of 6% has been used.

<sup>6</sup> Differences due to rounding

In 2000 prices the value of benefits for employees are £848 per year at costs of £1,080 per year to employers.<sup>29</sup>

If we exclude pensions and training then we estimate that about 10% of employers with FTC employees and comparators<sup>30</sup> exclude fixed term employees from benefits available to other employees. We assume that this is the case for all four groups of employees. We estimate that the number of employees negatively affected is between 49,000 and 73,000 employees.<sup>31</sup> This probably overstates the extent of discrimination because:

- a) some benefits will have qualifying periods which are not met by their current fixed term employees (or employers give employees an open-ended contract before they reach such thresholds)
- b) some employers pay their fixed term employees more than employers on open-ended contracts to compensate for the loss of benefits

We assume therefore that the number who miss out on benefits because of discrimination is between 25,000 and 53,000 employees. For these employees the gain is between **£21 million** (£848 x 25,000) and **£45 million**. For employer costs we arrive at an annual cost of between **£27 million** (£1,080 x 25,000) and **£57 million**<sup>32</sup>. This is probably an overestimate.

#### *Notification of Opportunities (Clause 6)*

The LFS suggests that only 21% of employees on fixed term contracts do not want a permanent job. 39% of fixed term employees work in temporary employment because they could not find a permanent job (LFS Autumn 1999) - though not all of them would want to work permanently in the job they do on a FTC. This measure will therefore be welcomed by some fixed term employees. However, we have no evidence that employers do not already offer permanent jobs to fixed term employees - so do not expect it to have much effect on job offers.

#### *Qualifying periods*

The fourth section of clause 4 is aimed at ensuring that length of service qualifications for entitlement to conditions of employment are the same for fixed term employees as for permanent employees, except where justified on objective grounds. Our survey found that 38% of employers have a minimum service period which their employees must serve before qualifying for benefit entitlements. This qualifying period probably explains some of the reported differences between people on fixed term and open-ended contracts. The survey did not look for differences in qualifying period but we are not aware of this being an issue in the UK. Some firms may have such different qualifying periods but we believe that FTC generally have similar qualifying period unless they are not eligible at all.

#### *Effects on the Charity and Voluntary Sector*

From the LFS (spring 2000) we know that 35,000 FTC work in the charity and voluntary sector. Additionally 6,000 employees working on a casual or seasonal basis work in this sector. In total these are 5% of the total number of FTC. Below we apply the same proportions of discrimination in the different

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<sup>29</sup> Discount rate used of 6% p.a..

<sup>30</sup> Excluding those cases where the respondent did not know.

<sup>31</sup> There are between 544,000 and 807,000 FTC with a permanent comparator. 9% of these are between 48,960 and 72,630.

<sup>32</sup> All costs and benefits in 2000 prices.

areas like training, holidays etc.

**Table A 6: Costs and benefits arising for charities and voluntary sector (for year of introduction of the measure) in £ million (5% of other costs and benefits), employees**

Employer	
Costs of other benefits	1.4 – 2.9
Costs of training	2 – 3.7
Pay	1.4 – 2
Pensions	1.7 – 4.9
Costs of removal of redundancy waiver	1.4 – 3.9
Costs of restriction of abuse	0.4 - 9
Administration costs*	n.r.
Benefits to productivity (first year after introduction of measure)	1.2 – 7.3
Net costs (employer)**	7.1 – 19.1
Employee	
Benefits to workers from other benefits	0.3 – 0.8
Benefits to worker from training	2 – 3.7
Pay	1.1 – 1.5
Pensions	1.7 – 4.9
Benefits from removal of redundancy waiver	1.4 – 3.9
Benefits from removal of abuse	0.3 – 0.8
Total benefits	6.8 – 15.6

\*Administration costs for Charities will be 5% of £ 1 – 2 million, which is below the reporting level.

## ANNEX THREE: TO PREVENT ABUSE

The RIA which accompanied the consultation document discussed three options. These were to limit fixed term contracts to either 3, 4 or 5 years. Following from the consultation it has been decided to restrict the use of FTC to 4 years.

To consider the possible effects of this limitation on the length of FTC we consider the number of employees who have been in their current job for longer than the four years. The calculations for the first option are done explicitly. For the following options only the share relating to FTCs lasting longer than four or five years are included.

The steps are as follows:

- a) We begin by assuming that restrictions (on length of contract or the number of renewals) mean that no-one who has been in their job for over four years is on a fixed term contract. Employees on an open-ended contract are entitled to redundancy pay if they lose their job by reason of redundancy after having completed two years' service. If we assume that the jobs end just as now, that would mean more redundancies and more payments.
- b) We adjust to allow for those who are in fact already on permanent contracts though employer and employee are aware of the fact that work is restricted to a fixed period (30%).
- c) We adjust to allow for the fact that many large employers already pay the FTC employee a lump-sum at the end of their contract which can be compared to a redundancy payment (between 30 and 50%).
- d) We assume that between 20 and 40% of employees leave at the end of their contract for reasons other than redundancy.

The analysis is based on exit rates from the different types of temporary jobs which have been derived by Booth et al. The empirically derived survival rates include the higher quit rates for temporary workers. Table A 7 gives the exit rates by gender and form of contract.

**Table A 7: Job tenure (cumulative percentages)**

Months	3	6	9	12	18	24	30	36	42	48	60
<b>Men</b>											
Fixed period	22	39	49	70	74	80	84	88	89	92	100
Seasonal	53	68	73	91	92	97	100				
Casual	53	68	73	91	92	97	100				
Other	53	68	73	91	92	97	100				
<b>Women</b>											
Fixed period	24	40	48	66	71	79	81	87	88	93	100
Seasonal	40	53	61	81	83	89	90	93	94	95	100
Casual	40	53	61	81	83	89	90	93	94	95	100
Other	40	53	61	81	83	89	90	93	94	95	100

Source: Booth and Francesconi, 2000

*How many FTC employees have been with their employer for a long period?*

Using the survival rates from Booth et al (see table A 7) we receive the number of employees affected by the restriction of renewals.

Table A 8 below shows the number of people affected and the costs arising from the redundancy payments in all three options.

**Table A 8: Number of employees qualifying for redundancy payment after 4 years of service**

	Min	Max
4 years	5,000	13,000

*Additional redundancy payment*

If the use of FTC is restricted to a period of 4 years, the employees who stay in their job for longer qualify for redundancy payments.

The effects of limiting the use of successive fixed term contracts to 4 years are set out below. It is assumed that, once the threshold is reached in each case, the employee is transferred to a permanent contract, but their job ends at the same point as it would at present. Consequently, employees who would have signed a redundancy waiver and not received alternative compensation will be entitled to redundancy payments. However, it is anticipated that employees would wish to keep hold of staff with experience and training, therefore it is likely that our calculations overestimate the number of employees who would receive hypothetical redundancy payments. After 2 years' continuous service, employees dismissed for reasons of redundancy are entitled to statutory redundancy payments worth £240 for each complete year of service. However, many employers pay substantially more than this and it is therefore likely that the costs of hypothetical redundancy payments will be higher. To calculate the costs to employers we assume that employees will stay on for another year and have 5 years of service when they leave the job. At the statutory level the costs for redundancy payments will be between £ 6 and 16 million.

*Administration costs*

The administrative costs of the measures proposed on fixed term work will be low and will almost exclusively fall in the first year of the regulations, when company policies and standard contracts might need changing. Most companies will not incur any costs.

We know from WERS 98 that there are 68,000 employers with more than 50 employees. Of these 43% use FTC (DTI survey). We further assume that 30% use a permanent employment contract for employees who consider themselves to be fixed term (this is in line with the assumption made before). This gives a total of 20,000 employers using FTC, each of whom will require one personnel clerk to spend two days changing existing payroll systems to comply with the new regulations. From the New Earnings Survey (NES) we know that a personnel clerk earns on average £250 per week, therefore the total cost will be approximately **£2 million**, which will only be incurred in the first year of the new measures. We assume small businesses of up to 50 employees will not be significantly affected, since they usually deal with employees individually.

There will be a further small administration cost if fixed term employees were entitled to a statement of reasons for less favourable treatment.

*Objective justification*

To objectively justify the renewal of a FTC beyond the four limit a personnel manager will have to consider the justification and put it in writing. We know from the New Earnings Survey (NES, 1998) that a personnel manager earns approximately £640 per week. The number of cases is identical to the number of cases discussed in the previous paragraph. We assume that the manager will take about 2 working days for the written justification costing £256. This leads to the following costs assuming (which is improbable), that employers continue to seem to justify objectively all current FTC:

**Table A 9: Costs for objective justification**

	after 4 years
Administrative costs of objective justification – employees	£1 – 2 million

## ANNEX FOUR: REMOVAL OF THE REDUNDANCY WAIVER

Many employers currently prefer staff on FTC over 2 years to waive their right to redundancy payments. The effect is that employees are not paid redundancy payments at the end of their contract if it is terminated because of redundancy at the end of the contract. The removal implies that at the end of a contract if the employee is dismissed due to redundancy, a payment has to be made.

The calculations are made using the following assumptions<sup>33</sup>:

- Number of employees on temporary work
- Of these 70% are on a FTC (others have a permanent contract with the mutual agreement that work will terminate at the end of a project, period)
- Of these 50-70% do not receive a redundancy payment (the others are paid a lump-sum at the end of their contract)
- Of these 60-80% do not terminate their contract for other reason than redundancy (approximately 40% of temporary workers made a life-style choice and will therefore not be counted as redundant<sup>34</sup>)

As before we only consider the statutory redundancy payments as costs arising from the removal of the redundancy waiver.

**Table A 10: Number of people affected**

	after 2 years	after 3 years	after 4 years	TOTAL
min	18,000	20,000	5,000	43,000
max	51,000	56,000	13,000	120,000

**Table A 11: Redundancy payments, in £ million**

	after 2 years	after 3 years	after 4 years	TOTAL
min	9	14	5	28
max	25	40	13	77

These calculations consider the impact of removing the redundancy waiver in combination with the fact that the use of FTC will be restricted to a maximum of four years. The costs are all limited to statutory redundancy payments. Contractual redundancy payments to FTC employees have not been included in the calculation as we have no information on payments made by firms which pay over and above the statutory requirements.

<sup>33</sup> These assumptions correspond to those made for the calculation of costs of limits to renewals.

<sup>34</sup> Research on Employment agencies, DTI, 1999.

## ANNEX FIVE: FTCS AND THE SMALL BUSINESS SECTOR

Small businesses are less likely to employ FTC employees. 15% of workplaces with 1 –10 employees on site have an FTC employee compared to 36% of workplaces with more than 100 staff.

**Table A 12: Proportion of establishments with FTC , by workplace size**

Number of staff on site	1 - 10	11 - 49	50 - 99	100+	All workplaces
Proportion of establishments with at least one FTC	15%	18%	37%	36%	19%

Source: DTI survey, 1998

12% of micro businesses (1-10 employees) who employ at least one FTC employee show a difference in treatment compared to 64% of large businesses. The table does not explore whether different treatment means better or worse treatment. The third column in table A 14 shows the share of establishments affected by the regulations. 15% of micro businesses employ FTC employees, of these 12% treat their FTC employees differently. In total this means that 2% of micro businesses will have to change the treatment of their FTC employees to comply with the regulations.

**Table A 13: Proportion of establishments with at least one difference in entitlements, by size**

No of employees	Establishments with at least one FTC, %	All establishments
1-10	12	2
11-49	25	4
50-99	35	11
100+	64	24
All	18	3

Source: DTI survey, 1998

## **ANNEX SIX: DEFINITION OF A FIXED TERM CONTRACT EMPLOYEE**

The definition of 'fixed term worker' in the Directive is 'a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event'. (Note: The Directive states the fixed term workers covered are those who have an employment contract or employment relationship as defined by national law and/or practice. This allows member states to apply the directive in accordance with the definitions used in national law. The fixed term regulations, like most other UK employment rights law, therefore apply to employees.

Some of the surveys mentioned in this RIA refer to workers and we have therefore used this term in quoting them. It will not necessarily correspond to legal definitions of 'worker' or 'employee'.

The survey commissioned by the DTI is a survey of employers. Employers were asked:

“ How many people based on this site are employed on fixed term contracts – for instance, those whose contracts are valid for six months, a year, two years etc. – as opposed to permanent positions. Please include only those whose conditions of employment are set by the organisation and do not include those whose conditions of employment are set by specialist employment agencies or those who are employed on a casual basis.”

This question explicitly excludes agency temps. It should therefore give a more accurate answer than the LFS (see below).

The LFS asks employees: “Leaving aside your own personal intentions and circumstances, was your job a permanent job or was there some way in which it was not permanent?” This question is followed by a question regarding the type of non-permanent jobs (seasonal work, work done under contract for a fixed period or for a fixed task, agency temping, casual type of work or some other way in which it was not permanent). The RIA includes all of these groups except for agency temps. It is therefore based on self-assessment. This form of data collection always bears the risk of a misrepresentation. In the case of FTC this includes especially agency temps or self employed workers.

The resulting figures cannot be used to give a straightforward answer for the number of people affected by the directive, and various assumptions must be made. The principal ones we have made are:

- Some people who have described themselves as self-employed will have done so in error, and may in fact correspond to legal definitions of 'worker' or even 'employee'.
- Not all workers will have the status of employees. The legal differences are complex, but it is fair to assume that the vast majority in category a) above will have contracts of employment which make them “employees” for the purposes of employment law. However, a larger proportion of those who describe themselves as “casual workers” may have relatively loose contractual arrangements which mean they are not “employees” for the purposes of employment law. Our assumptions on this are set out in table A 15.
- The figures above come from self-descriptions, and will include instances where the individual thinks of themselves as in some way non-permanent, but where (for whatever reason) this is not reflected in their contract, which is in standard, permanent form. These individuals are not likely to be caught by the regulations. . We have assumed that, for each category, the number of such individuals lies between 0 – 30% of the total who describe themselves as non-permanent.

**Table A 15**

	% of individuals in LFS who are employees	Total number of employees	% of employees with a comparator*	No. of employees with comparator
Fixed period	95%	793,000	50% - 63%	396,000 – 500,000
Seasonal	60 – 90 %	40,000 – 60,000	50% - 63%	20,000 – 38,000
Casual	50 – 80 %	158,000 – 253,000	50% - 63%	79,000 – 159,000
Other	50 – 90 %	97,000 – 175,000	50% - 63%	49,000 – 110,000

Source: LFS spring 2001

\* 50% for employees on contracts for a fixed period is the results of the survey commissioned by the DTI.

## ANNEX SEVEN: PAY AND PENSIONS

### Pay

We know from research commissioned by the DTI that 5% of temporary employees receive lower pay than their comparators. Applying this to the total number of people affected by the regulation a total of between 27,000 and 40,000 employees will be affected by the inclusion of pay.

**Table A 14: Number of employees gaining from the inclusion of pay**

	Minimum	Maximum
Fixed period	20,000	25,000
Seasonal	1,000	2,000
Casual	4,000	8,000
Other	2,000	6,000
<b>Total</b>	<b>27,000</b>	<b>40,000</b>

To calculate the average benefit for all employees by equal treatment in terms of pay we assume that the pay of those affected increases by 5%. Pay differs between different groups. Women earn on average less than men and part-timer earn less than full timers. We further assume that those who work for a fixed period earn the average wage over manual and non-manual while casual, seasonal and other employees earn the average rate for manual workers. This was done to reflect the different types of jobs to be done and to ensure that benefits were not overestimated.

The benefits for each of these groups are calculated as follows.

#### Average weekly pay

	male min	male max	female FT min	female FT max	female PT min	female PT max
Fixed period	£446.90	£446.90	£331.80	£331.80	£129.80	£129.80
Seasonal	£339.10	£339.10	£222.50	£222.50	£94.20	£94.20
Casual	£339.10	£339.10	£222.50	£222.50	£94.20	£94.20
Other	£339.10	£339.10	£222.50	£222.50	£94.20	£94.20

#### Average weekly benefit per employee (additional pay: 5%)

	male min	male max	female FT min	female FT max	female PT min	female PT max
Fixed period	£22.35	£22.35	£16.59	£16.59	£6.49	£6.49
Seasonal	£16.96	£16.96	£11.13	£11.13	£4.71	£4.71
Casual	£16.96	£16.96	£11.13	£11.13	£4.71	£4.71
Other	£16.96	£16.96	£11.13	£11.13	£4.71	£4.71

#### No of employees with comparator

	male min	male max	female FT min	female FT max	Female PT min	Female PT max	Total max	Total min
Comparator	50%	63%	50%	63%	50%	63%	50%	63%
Fixed period	185,299	233,477	103,842	130,840	107,269	135,158	396,410	499,476
seasonal	9,093	17,187	2,579	4,874	8,348	15,778	20,021	37,840
Casual	34,780	70,118	4,640	9,355	39,568	79,768	78,989	159,241
Other	20,207	45,828	10,610	24,063	17,692	40,125	48,508	110,016
							543,927	806,573

Total benefits to employees per week

	male min	male max	female FT min	female FT max	female PT min	female PT max
Fixed period	£207,026	£260,853	£86,137	£108,532	£34,809	£43,859
Seasonal	£7,709	£14,571	£1,435	£2,711	£1,966	£3,716
Casual	£29,485	£59,443	£2,581	£5,204	£9,318	£18,785
Other	£17,130	£38,851	£5,902	£13,385	£4,166	£9,449

Total benefits for employees are therefore:

**Table A 15: Benefits to employees due to increases in pay**

	min	max
Fixed period	£17	£21.5
Seasonal	£0.6	£1.1
Casual	£2.2	£4.3
Other	£1.4	£3.2
Total	£21.2	£30.1

The costs to employers will be higher than this to include non-wage labour costs of on average 30%. The costs would be between **£28 and 39 million**.

**Table A 16: Costs due to increases in pay, in £ million**

	minimum	maximum
Fixed period	£22.2	£27.9
Seasonal	£0.8	£1.4
Casual	£2.8	£5.6
Other	£1.8	£4.2
Total	£27.6	£39.2

## *Pensions*

We know further from the research commissioned by the DTI that 10% of employees with a comparator were not included in the pension scheme.<sup>35</sup>

In total between 55,000 and 82,000 employees would be affected.

**Table A 17: Number of employees affected due to inclusion of pensions**

	Employees		Benefits to employees	
Fixed period	40,000	50,000	£24	£60
Seasonal	2,000	4,000	£1	£4
Casual	8,000	16,000	£5	£19
Other	5,000	11,000	£3	£14
<b>Total</b>	<b>55,000</b>	<b>82,000</b>	<b>£33</b>	<b>£97</b>

If we value these schemes between £ 600 and £ 1,200 per annum total costs vary between **£ 33 and 97**.

The recent introduction of the stakeholder pension may in practice increase the number of FTC who have access to pension provision, and therefore reduce the number who would stand to gain from the inclusion of pensions in the FT regulations. We cannot yet estimate by how much.

The regulations allow employers to treat fixed term employees less favourably than comparable permanent ones where this is objectively justified. There may be cases where employers can justify excluding fixed term employees on shorter contracts from occupational pension schemes. This would reduce the costs to employers and benefits to employees arising from non-discrimination in access to pensions.

There may be extra administrative costs involved where fixed term employees are included in occupational pension schemes. It has not been possible to estimate these.

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<sup>35</sup> For the number of employees with a permanent comparator please see table under Pay.