

## Transposition note for the EC Fixed Term Work Directive

<b>Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed term work concluded by ETUC, UNICE and CEEP</b>			
<p>The Fixed Term Employees' (Prevention of less favourable treatment) Regulations 2002 will transpose the EC Fixed Term Work Directive and prevent pay and pensions discrimination against fixed term employees. Section 45 the Employment Act 2002 place a duty on the Secretary of State to make regulations in respect of fixed term work.</p>			
<b>Clause of Framework Agreement</b>	<b>Purpose</b>	<b>Implementation</b>	<b>Responsibility</b>
Preamble	<p>States that the Framework Agreement applies to 'fixed term workers with the exception of those placed by a temporary work agency at the disposition of a user enterprise'. This allows member states to exclude agency workers from the scope of any implementing legislation or agreements.</p>	<p>Regulation 19 (1) provides that the regulations shall not have effect in relation to agency workers. Regulation 19 (2) defines an agency worker.</p>	<p>Duty of Secretary of State – through new regulations.</p>
1 Purpose of directive	<p>1) To improve the quality of fixed term work by ensuring the application of the principle of non-discrimination.</p> <p>2) To establish a framework to prevent abuse arising from the use of successive fixed term employment contracts or relationships.</p>	<p>Section 45 of the Employment Act 2002 places a duty on the Secretary of State to make regulations in respect of fixed term employees. Paragraph 1 states that she shall make regulations:</p> <ul style="list-style-type: none"> <li>(a) for the purpose of securing that employees in fixed term employment are treated...no less favourably than employees in permanent employment, and</li> <li>(b) for the purpose of preventing abuse arising from the use of successive periods of fixed term employment.</li> </ul>	<p>Duty of Secretary of State – through new regulations.</p>

## Transposition note for the EC Fixed Term Work Directive

		<p>The Fixed Term Employees (Prevention of less favourable treatment) Regulations 2002 achieve these aims.</p>	
<p style="text-align: center;">2 (Scope)</p>	<p>1) States that the Framework Agreement covers fixed term workers who have an employment contract or relationship as defined in law, collective agreements or practice in each Member State.</p> <p>2) Provides that Member States, after consulting with social partners, may exclude from the application of the Agreement those employed on initial vocational training schemes, apprenticeships and contracts or relationships that have been concluded within the framework of a specific public or publicly supported training, integration and vocational retraining programme.</p>	<p>1) Regulation 1 – defines fixed term employee. Section 45 of the Employment Act defines an employee as an individual who has entered into or works under (or worked under, if the employment has ceased) a contract of employment.</p> <p>2) (a) Regulation 20 excludes those employed under contracts of apprenticeship.</p> <p style="padding-left: 40px;">(b) Regulation 18 provides that the regulations shall not have effect in relation to:</p> <p style="padding-left: 40px;">(i) A fixed-term employee who is participating in a scheme, designed to provide him with training or work experience for the purpose of assisting him to seek or obtain work, which is either a scheme provided for him under arrangements made by the Government or funded in whole or in part by one of the institutions of the European Community.</p> <p style="padding-left: 40px;">(ii) Fixed term employees whose employment consists of attending a period of work experience, not exceeding one year, that they are required to attend as part of a higher education course.</p>	<p>SoS to make regulations</p>

## Transposition note for the EC Fixed Term Work Directive

3 (Definitions)	<p>1) Defines ‘fixed term worker’ as a person with an employment contract or relationship entered into directly between an employer and a worker, the end of which is determined by objective conditions, such as reaching a specific date, completing a specific task or the occurrence of a specific event.</p> <p>2) Defines a comparable permanent worker as a worker with an employment contract or relationship of indefinite duration in the same establishment engaged in the same or similar work or occupation, with due regard being given to qualifications and skills.</p>	<p>1) The regulations apply to fixed term employees, as defined above<sup>1</sup>.</p> <p>2) Regulation 2 defines the comparable permanent employee as an employee on a permanent contract engaged in broadly similar work by the same employer and working in the same establishment. (Permanent contract is defined in regulation 1). Regulation 2 further provides that where there is no comparable permanent employee working in the same establishment, a fixed term employee can seek a comparator in another of the employer’s establishments.</p>	SoS to make regulations
4 Principle of non-discrimination	<p>1) Establishes that fixed term employees should not be treated less favourably than comparable permanent employees, unless this is objectively justified.</p>	<p>1) Regulation 3 paragraphs 1 and 3 provides that fixed term employees should not be treated less favourably than comparable permanent employees on the grounds that they are fixed term employees, unless this is objectively justified. Schedule 2 of the Fixed Term Regulations amends primary legislation that treats some or all fixed term employees less favourably than comparable permanent ones without objective justification. For example, fixed term employees will no longer be</p>	SoS to make regulations

<sup>1</sup> The Directive states that implementing legislation should cover fixed term workers who have an employment contract or relationship as defined in law, collective agreements or practice in each Member State. 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*. The use of the term ‘worker’ in the directive does not have a Community-wide meaning and does not equate to the definition of ‘worker’ in section 230 of the Employment Rights Act 1996.

## Transposition note for the EC Fixed Term Work Directive

	<p>2) Provides that, where appropriate, the <i>pro rata temporis</i> principle shall apply.</p> <p>4) Provides that period of service qualifications for any conditions of employment to be the same for fixed term employees as comparable permanent employees, unless a different period is objectively justified.</p>	<p>able to waive their right to receive statutory redundancy payments (which permanent employees cannot do). Regulation 4 makes provision on objective justification. It states that less favourable treatment in one particular condition is objectively justified provided the fixed term employee's overall employment package is not less favourable than that of a comparable permanent employee's.</p> <p>2) Regulation 1: Defines the 'pro rata principle.' Regulation 3(5) provides that the pro-rata principle shall apply unless it is inappropriate.</p> <p>4) Regulation 3(2) provides that a fixed term employee should not be treated less favourably than a comparable permanent one in respect of period of service qualifications related to any condition of service.</p>	
<p>5 Measures to prevent abuse</p>	<p>1) Requires member states to introduce one or more of the following, where there are no equivalent legal measures to prevent abuse of successive fixed term contracts:</p> <ul style="list-style-type: none"> <li>a. Objective reasons justifying renewals of fixed term contracts</li> <li>b. A maximum total duration of successive fixed term contracts</li> <li>c. A number of renewals of fixed term contracts</li> </ul>	<p>1) Regulation 8, paragraphs 1-3 of the Fixed Term Regulations places a statutory four-year limit on the use of successive fixed term contracts, unless the use of further fixed term contracts beyond this limit is justified on objective grounds.</p> <p>Regulation 8 (5) provides that this limit can be varied or a new mechanism to prevent abuse may be agreed to by collective or workforce agreements provided it comprises one or more of the conditions set out below:</p>	<p>SoS to make regulations</p>

## Transposition note for the EC Fixed Term Work Directive

	<p>2) Member states shall determine (a) the conditions under which fixed term contracts shall be regarded as successive and (b) the conditions under which fixed term contracts shall be deemed to be contracts of indefinite duration.</p>	<p>(a) A limit on the total duration of successive fixed term contracts;</p> <p>(b) A limit on the number of successive fixed term contracts;</p> <p>(c) It specifies objective reasons justifying renewals of fixed term contracts.</p> <p>The regulations do not place a limit on the duration of a fixed term employee's first fixed term contract.</p> <p>2) Regulation 8(4) provides that Chapter 1 of Part XIV of the 1996 Employment Rights Act shall apply in determining whether a fixed term employee has been continuously employed. Successive fixed term contracts are to be regarded as a contract that has been renewed without breaking the employee's continuity of service or two or more contracts under which an employee has been continuously employed.</p> <p>Regulation 8(2) provides that, where a fixed term contract is renewed in breach of the statutory limit or any other limit agreed through a collective or workforce agreement, the provision restricting its duration is to be of no effect.</p>	
<p style="text-align: center;">6 Information and employment</p>	<p>1) Provides that employers shall inform fixed term employees about permanent vacancies in the establishment, in order that they shall have the same opportunity as other workers to secure</p>	<p>Regulation 3(2) gives fixed term employees the right not to be not less favourably treated as regards the opportunity to receive training or the opportunity to secure a permanent position in the</p>	<p>SoS to make regulations</p>

## Transposition note for the EC Fixed Term Work Directive

opportunities	<p>permanent employment. This information may be provided by means of a general announcement at a suitable place in the establishment.</p> <p>2) Requires that fixed term employees be given access to training, as far as possible.</p>	<p>establishment. Regulation 3 paragraphs 6 and 7 provides that a fixed term employee has a right to be informed of permanent vacancies, in order to exercise the latter right and makes provision on the conditions under which a fixed term employee shall be deemed to be informed of a vacancy.</p>	
7 Information and consultation	<p>1) Requires that fixed term workers are taken into consideration in calculating the threshold above which workers' representative bodies provided for in national and community law should be constituted in the undertaking.</p>	<p>Already covered in the Transnational Information and Consultation of Employees Regulations 1999.</p>	N/A
8 Provisions on implementation	<p>5) Provides that the prevention and settlement of disputes and grievances arising from the application of the agreement are to be dealt with in accordance with national law, collective agreements and practice.</p>	<p>Regulation 7 provides that a fixed term employee may present a complaint to an Employment Tribunal if they believe that their employer has infringed a right under the Fixed Term Regulations.</p>	SoS to make regulations