

**AN ORDINANCE
TO PROVIDE FOR THE PROHIBITION OF
UNFAVOURABLE TREATMENT OF FIXED-TERM
EMPLOYEES**

**P. T. C. Pearson CBE
ADMINISTRATOR**

23rd December 2004.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the Employment (Fixed Terms) Ordinance 2004. Short title.

2. In this Ordinance, unless the context otherwise requires— Interpretation.

“employee” means a person having an employment contract or relationship, or a person who is treated as having such a contract or relationship under the terms of a collective agreement or employment practice;

“fixed term contract” means a contract or relationship entered into directly between an employer and an employee where the end of the contract or relationship is determined by objective conditions, such as—

- (a) reaching a specific date,
- (b) the completion of specific work, or
- (c) the occurrence of a specific event;

“fixed term employee” means an employee whose employment contract or relationship is a fixed term contract;

“indefinite term employee” means an employee who is not a fixed term employee;

“pro rata principle” means the principle that where a comparable indefinite term employee is employed in accordance with particular terms and conditions of employment, a fixed term

employee shall be employed on the same terms and conditions of employment unless it is reasonable in the circumstances to make a proportionate reduction having regard to the length of his contract.

Aim.

3. This Ordinance aims to –

- (a) improve the quality of fixed term employment by ensuring the application of the principle of non-discrimination; and
- (b) prevent abuse arising from the use of successive fixed term contracts.

Principle of non discrimination.

4.—(1) In relation to the terms and conditions of his contract or relationship, a fixed term employee shall not be treated less favourably than a comparable indefinite term employee solely because he is a fixed term employee, unless such different treatment is justified on objective grounds.

(2) In determining whether a fixed-term employee has been treated less favourably than a comparable indefinite term employee, the pro rata principle shall be applied where appropriate.

(3) Where a period of previous service is required in relation to particular terms and conditions of employment, such period shall be the same for a fixed term employee as for a comparable indefinite term employee, except where different lengths of service are justified on objective grounds.

(4) In this section “comparable indefinite term employee” means an indefinite term employee who—

- (a) is employed in the same undertaking or establishment, and
- (b) is engaged in the same or similar work or occupation, due regard being given to any qualifications or skills.

(5) For the purpose of comparisons under this section and subject to subsection (6), if there is no comparable indefinite term employee, the comparison shall be made by reference to any applicable collective agreement which is valid for the time being, or where there is no such agreement, by reference to any relevant practices or other relevant collective agreements in the Areas or the Republic.

(6) Subsection (5) applies only where the agreement or practice relates to indefinite term employment of persons who are or would be engaged in the same or similar work or occupation, due regard being given to any qualifications or skills.

Measures to prevent abuse.

5.—(1) Where this section applies, a purported fixed term contract shall be an indefinite term contract, and a provision which would determine the end of the contract or relationship by objective conditions shall be of no effect.

(2) This section applies, subject to subsection (4), where a person working under a purported fixed term contract has previously been continuously employed for a total period of thirty months or more on a fixed-term contract or on a series of successive fixed-term contracts.

(3) In calculating the period for the purposes of paragraph (2), no account shall be taken of any time before 25 July 2003.

(4) This section does not apply where the use of a fixed-term contract, including by way of renewal of a previous fixed-term contract, was justified on objective grounds.

(5) In any dispute as to whether this section does not apply by virtue of subsection (4), it shall be for the employer to prove that it does not apply.

(6) Without prejudice to the generality of subsection (4), in assessing whether there are objective grounds to justify use of a fixed term contract, particular account shall be taken of whether –

- (a) the needs of the undertaking in relation to the carrying out of the work under the fixed term contract are temporary,
- (b) the fixed term employee replaces some other employee,
- (c) the particularity of the work to be carried out justifies the specific duration of the fixed term contract,
- (d) the fixed term employee is employed on trial,
- (e) an order of a court or tribunal requires the use of the fixed term contract.

6.—(1) An employer shall inform his fixed term employees about vacancies which become available in his undertaking or establishment so as to ensure that such employees have the same opportunity to secure permanent positions as other employees. This information may be provided either by means of a general announcement at a suitable place in the undertaking or establishment, or by any other appropriate means.

Information and employment opportunities.

(2) An employer shall, as far as reasonably practicable, facilitate access by fixed term employees to appropriate training opportunities so as to enhance their skills, career development and occupational mobility.

7.—(1) Subsection (2) applies where any legislation in force for the time being, or any applicable employment practice or collective agreement, specifies a minimum number of employees as a threshold above which a representative body of employees may be set up in an undertaking or establishment.

Information and consultation.

(2) Where this subsection applies, a fixed term employee shall be taken into consideration in calculating the number of employees, on a basis which is consistent with the method of comparison between fixed and indefinite term employees prescribed for the purposes of section 4.

(3) An employer shall, as far as reasonably practicable, ensure that appropriate information is provided to existing representative bodies of employees about the employment of fixed term employees in the undertaking or establishment.

8.—(1) The Industrial Disputes Tribunal shall be the competent court for disputes of a civil nature arising from the application of the provisions of this Ordinance. Subject to the provisions of this section, the Industrial Disputes Tribunal shall have exclusive jurisdiction to determine any dispute of a civil nature (including any ancillary or incidental matter relating to such a dispute) arising from the provisions of this Ordinance.

Civil Jurisdiction of Industrial Disputes Tribunal.

Ordinance 6/1960

(2) Part III of the Citizens of the Republic (Jurisdiction of Courts) Ordinance 1960 shall apply to disputes of a civil nature arising from the provisions of this Ordinance, and for such purpose –

- (a) any proceedings in connection with such a dispute shall be treated as civil proceedings and, as appropriate, as an action or an appeal;
- (b) the Industrial Disputes Tribunal shall be treated as a Court of the Areas, and the Industrial Disputes Court of the Republic shall be treated as a District Court of the Republic; and
- (c) any corporation, company or other body corporate established in the Republic under the provisions of any Law of the Republic, shall be treated as a Cypriot.

(3) An award by the Industrial Disputes Tribunal or by the Industrial Disputes Court of the Republic under the provisions of this Ordinance shall be recoverable as a civil debt.

Criminal sanctions.

9. An employer who contravenes the provisions of this Ordinance commits an offence and is liable on conviction to a fine not exceeding two thousand pounds.

Inspectors or other officers.

10. Where the Chief Officer deems so necessary for the better application of this Ordinance, he may appoint Inspectors or other officers or both.

Regulations.

11.—(1) The Administrator may make Regulations for the better application of the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may, in particular, specify the duties and powers of Inspectors and other officers appointed under section 10, and regulate the exercise of those duties and powers.

More favourable arrangements.

12. The provisions of this Ordinance shall not impede any arrangement which is more favourable to a fixed term employee, whether or not that arrangement forms part of a collective agreement or of an agreement between an employer and an employee or between bodies representing employers and employees.

Exclusion from application.

13. This Ordinance shall not apply to a fixed term contract which:

- (a) is an initial vocational training relationship;
- (b) is by way of apprenticeship; or
- (c) has been concluded within the framework of a specific public or publicly-supported training, integration or vocational retraining programme.

Application to Crown.

14.—(1) Subject to subsections (3) and (4), this Ordinance, and any regulations made under it, shall bind the Crown and employees of the Crown.

(2) For the purposes of this Ordinance and any regulations made under it, persons in the service of the Crown shall be treated as employees of the Crown, whether or not they would otherwise be so treated apart from this subsection.

(3) Section 9 shall not bind the Crown or employees of the Crown.

(4) This Ordinance shall not bind the Crown in relation to its employment of—

- (a) a member of Her Majesty's Forces,
- (b) a member of a Civilian Component as defined in paragraph 1(b) of section 1 of Annex C of the Treaty of Establishment, or
- (c) a person enjoying the rights and facilities of members of Her Majesty's Forces by virtue of paragraph 3 of section 9 of Part II of Annex B of the Treaty of Establishment, other than as a dependent.

(5) For the purposes of this section "the Crown" means Her Majesty in right of Her Government in the United Kingdom and in right of Her Administration in the Areas.

15. This Ordinance shall come into force on the day of its publication in the Gazette. Commencement.

23rd December 2004

(128/219)

P. D. Draycott

Chief Officer.
