



Fixed-Term Workers Policy

DOCUMENT CONTROL	
Owner:	Head of HR Business Services
Document Control:	HR Business Support
Date Live From:	January 2018
Review/Approval Group:	Partnership Policy Review Group/Area Partnership Forum
Last Reviewed:	December 2017
Review Due/Cycle:	Every 2 years

1. Introduction

NHS 24 is committed to:

- Offering contracts of employment on a permanent basis except where there is a clear need for a particular job to be done on a temporary basis;
- Showing that all staff are valued for their contribution to delivering NHS 24's services.

The Staff Governance Standard requires that NHS Scotland is able to demonstrate it is an exemplary employer through how staff are managed and how they feel they are managed. In practice, this incorporates the need for organisations to review their use of fixed-term contracts and move to a position where fixed-term contracts are used only in exceptional and clearly defined circumstances.

Employment legislation provides protection and certain rights for staff to prevent employers using such fixed-term contracts and successive renewals as a method of avoiding liability for unfair dismissal or redundancy. Staff engaged on a fixed-term contract will be entitled to terms and conditions of employment that are not less favourable on a pro rata basis than the terms and conditions of a comparable permanent staff member, unless there is an objective reason for offering different terms. A comparable permanent staff member is someone who is engaged in NHS 24's workforce, in the same or broadly similar work, taking into account whether or not the fixed-term staff member and the permanent comparator have a similar level of qualifications and skills. NHS 24 will also limit the number and duration of successive fixed-term contracts, wherever possible.

2. Scope

This policy applies to all individuals who work under a contract of employment, the nature of which is fixed-term, i.e. it:

- is for a specific term that is fixed in advance; or
- terminates on completion of a particular task; or
- terminates upon the occurrence or non-occurrence of any other specified event.

The following groups are outwith the scope of this policy:

- Agency workers;
- Apprentices;
- Bank staff or those with zero-hours contracts (except where such staff are employees and the contract is for a fixed duration);
- Permanent employees seconded or acting into fixed-term posts;
- Students on work experience placements.

It has been developed in partnership with trade unions and reflects current employment legislations.

3. Purpose

The purpose of this policy and procedure is to:

- Provide clear principles and values which will govern the appropriate use of fixed-term contracts;
- Ensure compliance with legislation on the employment of staff on fixed-term contracts;
- Ensure all steps are taken to prevent less favourable treatment of staff on fixed-term employment contracts;
- Clarify the circumstances in which the use of fixed-term contracts may be appropriate; and
- Provide a procedure for dealing with fixed-term contracts which is fair and equitable, and has both the interests of the staff member and the effective operation of the service as its goals.

This policy aims to ensure that:

- Fixed-term contracts are used only in exceptional and defined circumstances, and are clearly time limited;
- Fixed-term staff are treated no less favourably than comparable permanent staff unless there is an objective reason to do so;
- Fixed-term staff are treated in the same way as comparable permanent staff in relation to opportunities for training, promotion, transfer and appraisal and have equal access to apply for permanent vacancies and will be made aware of any such vacancies through normal NHS 24 procedures.

4. Principles and Values

NHS 24 is committed to:

- Restricting the use of fixed-term contracts to occasions where there is a clear business need to do so, in line with the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2001;
- Providing permanent employment wherever possible using flexible forms of contract based on effective workforce planning;
- Ensuring that all fixed-term contracts have a start and end date or specific duration, and contain the same contractual terms and conditions of employment as permanent staff in line with the legislative framework;
- Ensuring that the length of the fixed-term contract reflects the needs of the role to be covered;
- Ensuring good employment practice is implemented on an equal basis for both permanent and fixed-term staff;

- Ensuring there is a framework of regular communication with individual fixed-term members of staff to discuss issues surrounding their employment status and address any concerns;
- Promoting the use of these principles and values by partner agencies;
- Ensuring all fixed-term employees feel valued as employees and have equal access to development opportunities that meet their identified needs; and
- Ensuring all fixed-term employees have a clear understanding of the current and planned future status of their post and are given the opportunity to apply for any suitable permanent positions which may arise.

5. Procedure for the Use of Fixed-Term Contracts

In certain exceptional circumstances, fixed-term contracts may be a valuable tool to enable NHS 24 to cover short-term gaps in essential services, thus enabling maintenance of consistent standards of service. Such contracts must only be used as a short-term option, be time limited and should not normally involve individuals in fixed-term contracts of 2 years or more. Circumstances where such contracts might be used include:

- Where it is known in advance that a particular job will come to an end on a specific date;
- Where it is required to protect posts for staff due to organisational change, for example, restructuring or re-provisioning of services;
- Where the employment is for the purpose of completing a particular task or project;
- Where the employment is for the purpose of replacing a staff member who is to be absent from work for a period of time (for example on maternity leave);
- Where the post is dependent on external funding and the funding will be available for only a temporary period of time.

5.1 Recruitment

If a short-term service development need exists, consideration should be given to whether a permanent contract could be appropriate. In such cases, the permanent post-holder could be utilised within other areas of the organisation at a later date. Alternatively, it may be deemed most appropriate to employ a fixed-term contract. To assist in determining the most appropriate contract for a piece of work, a risk management process should be applied by the hiring manager (see Appendix A).

If a risk assessment identifies that a fixed-term contract would be appropriate, managers should approach the recruitment to such a post in a responsible and consistent manner. Managers must clearly define the period the job is to last, and/or the reason for the fixed-term nature of the position.

In either case, a Recruitment Authorisation Form must be completed and forwarded to the HR Business Support Team.

Where appointing to a post on a fixed-term contract basis, managers must be able to clearly define the duration of the post, where appropriate, and the reason for the fixed-term nature of the post. The fixed-term nature of the post should be clearly evident in the advertisement, job information package, letter offering employment, and subsequent contract of employment. It should also be discussed at interview.

The following paragraph should be inserted as appropriate into the above documentation:

"This contract is for a fixed-term until **[date/duration]**. The reason for the fixed-term contract is **[reason]**."

In addition, a standard paragraph will be included in all documentation to reflect the support the organisation will provide the staff member in seeking further employment for when the fixed-term contract ends.

Where existing permanent employees apply for fixed-term contract roles, and their application is successful, it must be made clear (in writing) to the employee that in accepting the new post, their existing permanent contract has come to an end, and their new contract is fixed-term.

Where a fixed-term post is required as a result of nonrecurring funding, agreement should be reached in advance with the funding body that any exit costs associated with the termination of the fixed-term contract will be covered by the funding body or, alternatively, posts will be offered for a lesser period to ensure that funding is sufficient to cover any exit costs.

5.2 Review of Fixed-Term Contract

To assist in ensuring staff on fixed-term contracts of employment are treated fairly and consistently, the following principles must be adopted when the post is being reviewed.

All staff on fixed-term contracts will have their position reviewed mid-term or 6 months if the fixed-term contract is greater than 1 year and thereafter at regular intervals as appropriate. The outcome of this review must be discussed directly with the staff member and the outcome confirmed in writing.

The three options are:

1. No change in the plans and expectations of the fixed-term nature of the contract. The contract will run for the duration originally specified, with redeployment options being explored as described in 5.5.
2. There is a requirement to amend the end date of the contract.

3. The post becomes available on a permanent basis. If the post is to become permanent, this will need to be advertised and NHS 24's normal approval and selection processes will apply, unless the fixed-term worker either has continuous employment of over two years and satisfies the criteria set out in Section 5.5, or has worked for over four years on successive fixed-term contracts. See Section 5.5 for more details.

Where the end date of the contract is amended to a later date, notice of this **must** be given at least one month (or equivalent to the staff members notice period), before the expiry of the current contract, using existing organisational procedures in conjunction with HR Business Support . Please refer to sections 5.3 and 5.4.

5.3 Expiry of Fixed-Term Contract

5.3.1 Process

Whether the fixed-term contract is expiring on the date originally stated on the contract or an amended end date, the Director (or an authority i.e. directly reporting to the Director and delegated by the Director in writing, selected in line with Appendix A of the Management of Staff Conduct Policy; the 'delegated authority'), must meet with the staff member, **in line with the notice period set out in the staff member's contract, (for example, if the notice period is one month, the Director (or their delegated authority) must meet with the staff member in advance of the one month notice period commencing)**, to discuss each of the points below:

- To confirm the end date of the fixed-term contract, whether this is amended or the original date stated on the contract or contract variation.
- To confirm the reason for the fixed-term contract ending (which must be for a legitimate reason – capability or conduct issues, for example, would not be legitimate).
- To serve the employee with notice (in line with their contract of employment) that their contract will be terminated either upon expiry of the fixed-term or on the amended end date.
- To advise the staff member that they will be placed on the redeployment register, and to discuss the redeployment process. The staff member should be advised that they are entitled to remain on the register until the date of the end of the fixed-term contract.
- To confirm, where appropriate, any redundancy payment which will apply should suitable alternative employment not be obtained (please contact Finance for confirmation on any payment due).
- To advise the employee of their right of appeal.

The employee will have the right to be accompanied at the meeting by a representative of their trade union/professional organisation or a work

colleague. A representative from Human Resources must also be present. The line manager should contact HR in advance of any meeting to agree a date and time that is mutually convenient to all parties to meet.

Confirmation of the above details must subsequently be issued in writing by the Director or their delegated authority to the employee without unreasonable delay. (See Appendix C for an example of a letter confirming expiry of a fixed-term contract.)

- 5.3.2** All staff should be aware that if a fixed-term contract expires but the staff member has continued to work and be paid, then a contract for an indefinite period comes into existence by implication.

Ending employment for a fixed-term member of staff must be handled in the same way as for a permanent member of staff. A staff member on a fixed term contract also has the same rights as a permanent staff member, for example:

- The right not to be unfairly dismissed;
- The right to notice on termination (if this is before the specified fixed-term expires);
- The right of appeal against dismissal under the organisation's existing procedures.

In line with the 2002 amendments to the Employment Rights Act 1996, in certain circumstances, a fixed-term employee will be treated as being dismissed by reason of redundancy. If a fixed-term contract is not renewed because the need for employees to carry out work of a particular kind has ceased, this would be a dismissal by reason of redundancy. Should a staff member in this position have more than two years' continuous service, a redundancy payment under contractual terms and conditions of service must be made.

This does not mean, however, that there is a redundancy situation every time a fixed-term employee's contract ends. For example, if an employee is covering for an absent permanent employee (e.g. a woman on maternity leave), the reason for the contract ending is not redundancy. The need for someone to perform that kind of work has not ceased or diminished.

In circumstances where the termination of a fixed-term contract meets the definition of redundancy (as described above), the following additional requirements apply in order to ensure that the fixed-term contract is ended safely:

- Where an employee has been unable, as at the termination date, to obtain suitable alternative employment, their contract will be terminated as detailed above. Additionally, however, where they have more than 2 years' continuous service, they will be entitled to a redundancy payment in line with Agenda for Change Terms and Conditions. Previous NHS service will count as reckonable service for the payment due where

there has been a break of less than 12 months and redundancy has not previously been payable for any part of that service.

- Agenda for Change notes that staff members shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:
 - they are dismissed for reasons of misconduct, with or without notice; or
 - at the date of the termination of the contract have obtained without a break, or with a break not exceeding 4 weeks, suitable alternative employment with the same or another NHS employer; or
 - unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
 - leave their employment before expiry of notice, except if they are being released early; or
 - they are offered a renewal of contract (with the substitution of the new employer for the previous NHS one); or
 - where their employment is transferred to another public service employer who is not an NHS employer.
- Depending on the difference in terms and conditions, and therefore whether any alternative employment opportunity is deemed 'suitable', NHSScotland organisational change protection of earnings will apply.
- An employee may choose to apply for, and accept, an alternative post where the difference in terms and conditions is such that protection of earnings will not apply (i.e. a post which would not be deemed by the organisation to be a suitable alternative). In such circumstances, the employee should be advised that, if they choose to accept such a post, they will forfeit any entitlement to a redundancy payment which would otherwise apply should their employment be terminated on grounds of redundancy and with no suitable alternative employment opportunities having been identified.
- Employees should be advised that, should they unreasonably fail to apply for suitable alternative employment opportunities which may arise or to accept any such post offered, they may forfeit any entitlement to a redundancy payment.

More information regarding redeployment can be found in the NHS 24 Redeployment Policy.

5.3.3 Exit Support

As part of their personal development plan, the staff member will meet with their line manager to discuss the likely availability of redeployment opportunities.

In addition, the Human Resources Directorate will provide the opportunity for the staff member to receive advice on support available to them in their search for alternative employment e.g. CV preparation, interview skills etc.

An exit interview/questionnaire should be completed, which should explore the extent to which the individual felt:

- There was equal access to development opportunities;
- They were kept informed about the current and likely future status of their post;
- They had the opportunity to discuss any issues of concern;
- They had access to suitable alternative employment within the employing organisation.

Reasonable time off will be given by the manager for the staff member to attend interviews within one month prior to the expiry of the contract.

Fixed-term staff will also have access to the internal vacancy lists as per existing NHS 24 arrangements.

5.4 Amended End-Date of Fixed-Term Contract

Where it has been identified that there is a requirement to amend the end date of a fixed-term contract, to either an earlier or later date than previously stated, the following process must be followed.

In the case of an earlier end date, the Director, or their delegated authority, must discuss the fact that the end date of the contract is to be amended with the staff member. This discussion must take place in line with the notice period set out in the staff member's contract. The process for Expiry of a Fixed-Term Contract should then be followed. It should be noted however, that the organisation has a duty to provide suitable alternative employment for the remainder of the fixed-term contract.

In the case of a later end date, the line manager should have this discussion with the staff member, and advise that approval must be granted from the Finance Department and the Director of Human Resources prior to a later end date being agreed. To obtain approval for the extension, the line manager should complete a Recruitment Authorisation Form and forward to the HR Business Support Team. HR Business Support will then confirm the outcome of the approval request to the line manager who should confirm the outcome to the staff member using Appendix B or C, as appropriate.

There should normally be no more than two contract renewals in any one-year period of employment, with objective justification being necessary for any additional renewals.

Neither the initial contract nor renewal period should be for less than three months other than for clear, objective and specified reasons, for example, awaiting confirmation of return from maternity leave. In such circumstances it would be reasonable and justifiable to offer a renewal of less than 3 months.

5.5 Continuous Fixed-Term Employment

Overall continuous fixed-term employment (whether on a single fixed-term contract or on a series of successive fixed-term contracts) should not exceed two years, with objective justification being necessary for any extension.

Staff who have continuous service of more than two years (within successive fixed-term contracts) will be appointed onto a permanent contract if the following criteria are all met in full:

- The member of staff has held fixed-term contracts consecutively which were used to protect posts for permanent staff due to planned organisational change, service reconfiguration or redeployment; and
- The member of staff has been employed for more than 2 years; and
- Recurring funds for the post are available beyond the 2 year period which can be used to retain the staff member, or a positive risk assessment has been carried out to establish the impact on the organisation should the post be subject to non-recurring funding.

In situations where a staff member achieves two years' service, and it is known that the contract will not be renewed within three months of the date of achieving two years' service, the individual's contract of employment will remain fixed-term.

Managers must also be mindful of the legislation which applies with regard to the use of successive fixed-term contracts. Individuals with a succession of fixed-term contracts of over four years will be entitled to permanent contractual status under employment law, unless this can be objectively justified. In circumstances in which permanency of employment cannot be offered within a particular role, but where continuation of the fixed-term contract cannot be objectively justified, the employee will be deemed to have a permanent contract with NHS 24, being subject to redeployment in the same way as any other displaced permanent employee when the fixed-term post comes to an end.

6. Conditions of Service

Staff on fixed-term contracts of employment should have the same contractual terms and conditions of employment as comparable permanent staff. This includes pensions and learning and development opportunities. Any differences need to be objectively justified, for example, where the condition may not be reasonably or realistically met within the expected duration of the contract (for example, where the post would usually attract a leased car, this would only be applicable to fixed-term posts of 3 years or more).

7. Monitoring and Measuring Success

The success of this policy on the appropriate use of fixed-term contracts will be measured through:

- **quantitative data** (numbers of fixed-term contracts);
- **qualitative data** (reasons for fixed-term contracts); and
- **qualitative data** gathered through the use of exit interviews/questionnaires, in relation to the areas outlined in Section 5.5.2.

This data will be presented on a 2-yearly basis to the Policy Partnership Review Group.

8. Grievances and Right of Appeal

Any member of staff who feels aggrieved in the application of this policy during employment should raise this through the Grievance Policy.

All staff should be aware that the termination of a fixed-term contract of employment for a member of staff equates to a dismissal. Staff therefore have the right of appeal against the dismissal using existing organisational procedures. Any such appeal should be lodged within three weeks of receiving the letter confirming expiry of the contract, which the Director (or their delegated authority), will have issued one month before the contract ended. Staff also retain the right to claim unfair dismissal if they have the qualifying service.

9. Review

This policy will be reviewed in Partnership on a 2-yearly basis.

10. Equal Opportunities

This policy will be impact-assessed and monitored for its effects in terms of equality and diversity.

Appendix A

Risk Assessment/Review Framework (Individual or Group)

Any success in reducing fixed-term contracts depends on robust workforce planning processes. The following is a checklist which will help managers to identify if fixed-term contracts are necessarily the most appropriate means of filling a post. By completing the risk assessment process, managers will be able to make an informed decision as to whether a permanent appointment can be made. Managers should also use this risk assessment process to review the status of fixed-term contracts periodically, to assess whether it is possible to make the post permanent.


The Workforce Plan will identify areas of recruitment and retention difficulty. The planning process will allow managers to look at issues beyond their own service boundaries and take a more corporate and proactive approach to ensure best practice in staff recruitment and retention, using fixed-term contracts as appropriate.

The following process can be used to review individual vacancies. In weighing up the following factors, managers should apply their knowledge of their service and any recruitment and retention issues which are unique to their area. The following points are core but managers may wish to include additional points to suit local circumstances:

- Turnover for staff group
- Vacancy factor
- Average time to fill posts
- Contributory factors e.g. geography, market, and contract duration
- Ability to recruit
- Proposed service developments
- Impact on service of failure to recruit
- Secondment opportunity
- Cost of post/overall financial impact
- Consideration of clinical and corporate risk

On considering the above, line managers should be able to determine the suitability of a fixed-term contract for their current vacancy. Managers should detail their specific reasons for considering either a fixed-term or permanent contract within the Recruitment Authorisation Form.

Appendix B Model Amended (Later) End Date of Fixed-Term Contract Letter

	
[Employee's Name] [Address] [Address]	
	[Date]
Dear [Name] ,	
Fixed-Term Contract Extension	
I refer to your recent meeting with [manager's name] on [date] , and write to confirm the offer to amend the end date of your fixed term contract of employment.	
The contract will be extended to [date] under the same terms and conditions. The reason for the amended end date is [as per contract renewal form] .	
The Human Resources Directorate is able to provide you with advice and guidance on career support such as CV preparation, interview skills and job opportunities within the NHS upon the termination of your fixed term contract. Further information regarding this will be provided to you at the appropriate time.	
Please confirm your acceptance of this offer by signing the form below and then returning the letter to me. I have also enclosed a copy of this letter for your own records.	
Yours sincerely,	
[Manager's Name] [Job Title]	

A copy of the above signed letter must be forwarded to HR Business Support .

Appendix C

Model Confirmation of Expiry Letter



[Employee's Name]
[Address]
[Address]
[Date] Dear [Name],

Expiry of Fixed-Term Contract of Employment

I refer to our recent discussion [in my position as delegated authority,] and now write to confirm that your fixed-term contract of employment with **NHS 24** will expire on **[date]**. This post was fixed term in light of **[reason]**. The notice period to end this contract was set out in your contract of employment, dated **[date of issue of contract]**.

The Human Resources Directorate is able to provide you with advice and guidance on career support such as CV preparation, interview skills and job opportunities within the NHS. If you wish to take up this support, please contact recruitment@nhs24.scot.nhs.uk.

[Should you wish to appeal against the termination of this contract please do so by writing to [person] by **[14 calendar days after date this letter is issued]**.]*

I would like to take this opportunity to thank you for your commitment and support during your contract with us and to wish you well in the future.

Yours sincerely,

[Director's, or Delegated Authority's, Name]
[Job Title]

A copy of the above signed letter must be forwarded to HR Business Support .