



Using Fixed Term Contracts

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NHS SHETLAND DOCUMENT DEVELOPMENT COVERSHEET*

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07/09/2015	2.0 – Addition – Paragraph 2 5.0 – Addition – Bullet point 6 6.1 – Removal of requirement to advertise, addition of redeployment process, removal of requirement for 2 years’ service to qualify for redeployment, application to any fixed term employee displaced. 6.3 – Removal of requirement for 2 years’ service to qualify for redeployment

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1.0 Policy Statement

All employees within NHS Shetland are valued for the contribution they make to the service, regardless of their contractual status. NHS Shetland is committed to using permanent contracts of employment as the norm, with fixed-term contracts only being used where necessary and appropriate. Furthermore, NHS Shetland is committed to treating those employed on fixed-term contracts no less favourably than its permanent employees (unless this can be objectively justified).

The Staff Governance Standard states that NHS Scotland staff should be treated fairly and consistently, and NHS Shetland is expected to review its use of fixed-term contracts in order to be able to demonstrate that fixed-term contracts are only used within the organisation where necessary and appropriate.

This policy has been developed in partnership with local trade union/professional organisation representatives. It reflects the best practice identified in, and meets the minimum standards set out in, the Fixed-Term Contracts Partnership Information Network (PIN) Policy. The policy also reflects relevant current employment legislation.

2.0 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 the completion of a particular task; or terminates upon the occurrence or non-occurrence of any other specified event).

The policy does not apply to temporary adjustments to working hours or temporary 'acting up' salary band amendments.

3.0 Purpose

The purpose of this policy is to:

- Provide clear principles and values which will govern the appropriate use of fixed-term contracts;

- Ensure compliance with legislation governing the employment of people on fixed-term contracts;
- Ensure all necessary steps are taken to prevent fixed-term employees from being treated less favourably than comparable permanent employees;
- 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 employee and the effective operation of the service as its goals.

4.0 Principles & Values

NHS Shetland is committed to:

- Using permanent contracts of employment wherever possible, and only using fixed-term contracts where this is necessary and appropriate, based on genuine organisational need, by ensuring effective workforce planning and by regularly reviewing and monitoring the use of fixed-term contracts on a partnership basis;
- Complying with employment legislation which applies in the case of fixed-term employees;
- Ensuring that all fixed-term contracts have a start and end date, or specific duration where appropriate, which reflects the needs of the role to be covered, with no more than two renewals within any one-year period (unless this can be objectively justified);
- Ensuring that fixed-term employees are not treated any less favourably than permanent employees, and are employed on the same core contractual terms and conditions of employment as comparable permanent staff (unless this can be objectively justified);
- Ensuring that appropriate communication takes place with employees on fixed-term contracts to discuss issues relating to their employment status and address any concerns;
- Ensuring that, by implementing the above, all fixed-term employees feel valued as employees; have equal access to development opportunities that meet their identified needs; have a clear understanding of the

current and planned future status of their post; and are given the opportunity to apply for a permanent contract if a suitable position arises; and

- Promoting adherence to these same principles and values by partner agencies.

5.0 Appointing Fixed-Term Employees

In certain exceptional circumstances, fixed-term contracts may be a valuable tool to enable managers to cover short-term gaps in essential services, enabling consistent standards of service to be maintained. However, such contracts must only be used as time-limited, short-term options, and individuals should not normally be in non-permanent employment for more than two years (unless this can be objectively justified). Good workforce planning will help to appropriately identify situations where fixed-term contracts are necessary. Circumstances where such contracts might be used include:

- Protecting posts for staff due to organisational change (e.g. restructuring or redesign of services);
- Covering leave (e.g. sickness absence; maternity leave; study leave; special or other leave);
- Project or research posts;
- Posts which are not funded on a recurring basis; or
- Backfill for short-term secondment.
- To allow for ongoing workforce planning and review of establishment.

Consideration should be given to appointing staff on a permanent basis if a risk assessment shows that permanent employment is highly likely to be available at the end of the fixed-term period (for example, due to an area of recognised skills shortage or to the flexibility of the core skills required).

When considering whether to appoint to a post on a fixed term basis, managers should follow the needs assessment framework outlined in Annex A.

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 non-renewal 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.

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].”

Where individuals with continuous service within the NHS apply for fixed-term contract roles, NHS Shetland reserves the right to refuse any such appointment. Where existing permanent employees apply for fixed-term contract roles, and where NHS Shetland does permit such an appointment, it must be made clear (in writing) to the employee that in doing so their existing permanent contract has come to an end, and their new contract is fixed-term. The purpose of this measure is to ensure that NHS Shetland does not incur the cost of excessive and unnecessary severance payments at the end of fixed-term contracts.

6.0 Reviewing Fixed-Term Contracts

All staff on fixed-term contracts will have their position reviewed mid-term and thereafter as appropriate. The outcome of this review must be discussed directly with the employee and confirmed in writing.

There are three options which may arise during such discussions:

- There is a requirement to make the post permanent, in which case the process to be followed is set out below at 6.1; or
- There is a requirement to extend the length of the contract. Where there is an objective justification for extending the contract, the process for

renewal of a fixed-term contract, as detailed below at 6.2, should be followed; or

- There is 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 the process for nonrenewal of a fixed-term contract, as detailed below at 6.3 and 6.4, to be followed.

6.1 Requirement to Make the Post Permanent

Where it is determined that a fixed-term role needs to be carried out on a permanent basis, any employee currently undertaking such a role on a fixed-term contract basis would have the opportunity to be considered for the permanent position under redeployment, unless there were other suitable candidates on the redeployment register at that time who would either take priority or be considered as part of a selection process. The redeployment process would apply to any fixed-term employee displaced as a result of the end of their fixed term contract in line with NHS Shetland's Redeployment Procedure.

However, where the criteria set out below with regard to the use of successive fixed-term contracts are met; there may be circumstances where a fixed-term employee would require to be automatically appointed to the role on a permanent basis without the need to make use of the Redeployment Procedure.

6.2 Requirement to Renew Fixed-Term Contract

In circumstances in which there is a requirement for employment to continue beyond the initial fixed-term contract expiry period, consideration needs to be given to the following:

- NHS Shetland is committed to appointing onto a permanent contract fixed-term employees who have continuous service of more than two years (within successive fixed-term contracts) where the following criteria are **all met in full**:
 - o 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 two years; **AND**
 - Recurring funds for the post beyond the two-year period exist, which can be used to retain the member of staff, or a positive risk assessment has been carried out to establish the impact on the organisation should it be non-recurring funding.
 - (In situations where an employee 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 Shetland, being subject to redeployment in the same way as any other displaced permanent employee when the fixed-term post comes to an end.
 - Fixed-term contracts should not be renewed on more than two occasions in any one-year period, without first establishing an objective justification. Neither the initial contract nor renewal period should be for less than three months other than for clear, objective and specified reasons (e.g. awaiting confirmation of a permanent postholder returning from maternity leave (in which 28 days' notice is all that is required from the employee on maternity leave) – in such circumstances it would be reasonable and justifiable to offer one-month renewals).

Where a fixed-term contract necessarily and appropriately requires to be renewed, the manager should secure agreement from the employee for the fixed-term contract to be extended. The manager will then arrange for a variation to the contract of employment to be issued to the employee using existing organisational procedures such as a change form.

Managers should be equally mindful of the need to take care to avoid employees on fixed-term contracts working past the specified expiry date, where the contract has not been renewed, as there is a risk of an implied continuation of the arrangement as an 'open contract'.

6.3 Non-Renewal of a Fixed-Term Contract

Irrespective of the reason for the fixed-term contract, should a situation arise where the employee becomes displaced from the role prior to its agreed point of expiry, NHS Shetland has a duty to provide suitable alternative employment for the remainder of the fixed-term, during which NHSScotland organisational change protection of earnings will apply. However, should the employee choose to leave the organisation at this point, the employment relationship would terminate.

Where it is known that an employee's fixed-term contract will not be renewed upon expiry, the relevant manager with the authority to dismiss must meet with the employee, ideally three months prior to the expiry date of the fixed-term contract (and no later than the contractual notice period), to discuss the following:

- To confirm that the fixed-term contract will not be renewed upon expiry;
- To confirm the grounds for non-renewal of the fixed-term contract (which must be for a legitimate reason – capability or conduct issues, for example, would not be legitimate grounds for non-renewal, with NHS Shetland's policies being applied, as appropriate, no differently than would be the case with permanent employees);
- To serve the employee with notice (in line with their contract of employment) that their contract will be terminated upon expiry of the fixed-term;
- To advise the employee that they will be placed on the redeployment register, and to discuss the redeployment process. The employee should be advised that they will remain on the register until the date of the end of the fixed-term contract;
- If the employee has more than two years' continuous service, to confirm, where appropriate, any redundancy payment which will apply should suitable alternative employment not be obtained (see 6.4);
- To advise the employee of their right of appeal; and

- To discuss any other matters in preparation for the termination date.

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 should also be present.

Confirmation of the above details should subsequently be issued in writing to the employee without unreasonable delay and according to locally agreed timescales.

In addition, the Human Resources department may be able to advise on available support for the individual to help them find alternative employment, such as CV/application form preparation, interview skills etc. Reasonable time off will be given by the manager for the employee to attend interviews during the notice period.

6.4 Termination Which Meets the Definition of Redundancy

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 104 weeks' 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.
- Organisation change pay protection will not apply where employees are redeployed to a lower banded role as the result of the termination of a fixed term contract.
- 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. 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. For example, at the end of a fixed-term band 4 position, an employee chooses to apply for a band 2 position. Organisational change protection would not apply and the employee's earnings on appointment would be appropriate to band 2.

- 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.

7.0 Training

To support the fair and consistent application of this policy, and adherence to current relevant employment legislation, NHS Shetland will ensure that the use of fixed-term contracts is included within line management development programmes and ensure that any manager who wishes to appoint to a fixed-term contract role has either participated in such a programme or discussed the decision with a Human Resources Advisor.

8.0 Monitoring & Measuring Success

NHS Shetland will monitor and measure the successful implementation of this policy, in partnership, on an ongoing basis. This information will be used as part of the review of the policy, as well as being used to demonstrate the appropriate use of fixed-term contracts for national monitoring purposes under the Staff Governance Standard.

At an organisational level, the Area Partnership Forum (or equivalent) will monitor the development of integrated workforce plans and the organisational learning and development plan, to ensure that fixed-term contracts are only used where necessary and appropriate.

In addition to the above, the appropriate use of fixed-term contracts will be measured through:

- Quantitative data (numbers of, and reasons for, fixed-term contracts); and
- Qualitative data gathered, for example, through the use of exit interviews/questionnaires. This type of questionnaire will explore the extent to which individual fixed-term employees felt that they:
 - o Had equal access to development opportunities;
 - o Were kept informed about the current and likely future status of their post;
 - o Had the opportunity to discuss any issues of concern; and
 - o Had the opportunity to gain equal access to suitable alternative employment within the organisation.

This information will be monitored at two levels:

- At an organisational level, through the Area Partnership Forum (or equivalent); and
- At an individual service/directorate level, with arrangements being agreed locally at this level for reviewing individual fixed-term contracts, in partnership, on a quarterly basis.

9.0 Review of Policy

This policy will be reviewed, in partnership, by NHS Shetland on an annual basis.

10.0 Impact Assessment

This policy has been equality impact assessed using a rapid impact checklist process. The impact on groups with protected characteristics was felt to be largely positive, particularly in relation to Healthcare, working conditions, equality of opportunity, Employment / Stress, Social Status / Income and risk taking behaviour. During the consultation period, some amendments were made to the policy and the impact of these changes was assessed throughout. The decision to apply organisational change pay protection and redeployment to fixed-term contracts terminating after two-years' service was considered to be positive, though could have a

detrimental impact on those with less than two years' service. However, it was not felt that this would be detrimental to any one protected characteristic in particular, and was justified in terms of cost to the organisation and consistency with substantive employees.

Annex A: Needs Assessment/Review Process (Individual or Group)

By completing the needs assessment process, managers will be able to make an informed decision as to whether a permanent or fixed-term appointment may be made. Managers should also use this needs assessment process to review the status of fixed-term contracts periodically, to see if it might be possible to make any fixed-term posts permanent.

Any success in ensuring the necessary and appropriate use of fixed-term contracts depends on robust workforce planning processes. However, the checklist below may additionally help managers to identify if fixed-term contracts are necessarily the most appropriate means of filling a post.

Local workforce planning processes will identify areas of recruitment and retention difficulty. Such processes 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 checklist below can be used to review individual vacancies. However, at a corporate level an annual risk assessment for individual staff groups should be carried out by the Area Partnership Forum (or equivalent).

In weighing up these factors, managers should apply 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.

Needs Assessment Checklist

Managers should mark the organisational risk in relation to each factor (not all may be applicable for every proposed fixed-term contract).

	High	Medium	Low
Turnover for staff group			
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/financial impact			
Consideration of clinical and corporate risk			
Additional factor:			
Additional factor:			
Additional factor:			