



Fixed Term Contracts Policy

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The provisions of this policy, which was developed by a partnership group on behalf of Grampian Area Partnership Forum, Apply equally to all employees of NHS Grampian except where specific exclusions have been identified.

NHS Grampian
Fixed Term Contracts Policy

This document is also available in large print and other formats and languages, upon request. Please call NHS Grampian Corporate Communications on Aberdeen (01224) 551166 or (01224) 552245. This Policy has undergone Equality and Diversity Impact Assessment.

Revision History:

Document Title	Policy Version	Date approved by GAPF	Review Date
Fixed Term Contracts Policy	2	Agreed to be refreshed by the 10 August 2017 GAPF	17 June 2020
Fixed Term Contracts Policy	3	Not agreed by GAPF. Policy updated to reflect the revised Redeployment Policy, agreed by 19 September 2019 GAPF. Change made page 7 and Appendix 1 to recognise that those with less than one years continuous NHS Grampian service in total now receive 4 weeks on the Redeployment Register	30 June 2020
Fixed Term Contracts Policy	3	Temporary amendment with regard to Covid-19 FTC noted below (now removed).	30 June 2020
Fixed Term Contracts Policy	3	August 2021 - Review date amended to 2022 from 2020 given the policy is part of the Once for Scotland Phase II work. When the policy was amended to be in line with the Redeployment policy, 6.3.3. was not amended. This has been corrected with the period of time on the register amended to three months. Extract from the Covid-19 Q&A updated (now removed). Section 6 and Appendix 1 updated to reflect 3 month entitlement to redeployment.	30 June 2022
Fixed Term Contracts Policy	3	March 2022 – Updated sections 6.3.1, 6.3.2 and 6.3.3 in line with the Redeployment Policy	31 December 2023

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NHS Grampian Fixed Term Contracts Policy

1. Introduction

NHS Grampian is a major employer in the public sector and it seeks to be exemplary in terms of employment practice while balancing service pressures against finite resources.

The Staff Governance Standard states that NHS Grampian staff should be treated fairly and consistently. Additionally, as individuals, staff should feel valued and have the highest levels of employment security, and an assurance that fixed-term contracts are used appropriately. The workforce data that forms the evidence base for this document indicates an increase in fixed-term contracts year on year and the aim of this policy is to ensure that fixed-term contracts are only used where necessary and appropriate.

2. Scope of Policy

This policy applies to staff employed on a Fixed-Term contract basis as defined below (including locum medical staff where directly employed by NHS Grampian and where such employment meets the definition of a fixed-term contract as defined below)

The following groups are out with 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; and
- Students on work experience placements.

The Secondment Policy, which can be accessed on the Intranet, indicates best practice relating to secondment, and Section 6.32 of the Agenda for Change Terms and Conditions of Service Handbook outlines the basis for acting up (called Temporary Movement to a Higher Grade).

3. Principles and Values

NHS Grampian 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 fixed-term employees are not treated any less favourably than permanent employees, and are employed on the same contractual terms and conditions of employment as comparable permanent staff (unless this can be objectively justified – i.e. there is a good business reason to do so.)

4. Definition of a Fixed Term Contract

A contract of employment which:

- 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

5. Appointing Fixed Term Employees

In certain circumstances, fixed term contracts may 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 the same non-permanent post for more than two years (unless this can be objectively justified) as this would attract a redundancy payment should the contract come to an end. Circumstances where such contracts might be used include:

- Protecting posts for permanent 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

Where a fixed term post is required as a result of non-recurring funding or external 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 e.g. time on redeployment register or redundancy will be covered by the funding body or alternatively the post will be offered for a lesser period to ensure that funding is sufficient to cover any exit costs.

Where appointing to a fixed term post, managers must be able to clearly define the duration and the reason for the fixed term nature of the post. When the exact length of the fixed term is not known at the outset e.g. for long term sick leave cover, the minimum duration should be given and extensions offered when necessary. 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 and it should also be discussed at interview.

Where individuals with a permanent contract i.e. over 2 years service within the NHS apply for fixed term contract roles, the appointing officer reserves the right to refuse any such appointment. Where existing permanent employees apply for fixed term contract roles, and where NHS Grampian 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, however they will maintain their continuous service.

6. Reviewing Fixed Term Contracts

All staff on fixed term contracts will have their position reviewed mid-term or at least 3 months prior to the expiry date (to take into account the organisations obligations for redeployment) of the fixed-term contract. 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 or
- There is a requirement to extend the length of the contract. Where there is an objective justification for extending the contract, the renewal process of a fixed term contract as detailed below should be followed
- 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 followed for non-renewal of a fixed term contract as detailed below.

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, the post requires to be advertised in the normal way and any employee currently undertaking such a role on a fixed term contract basis may apply. Where the employee has more than one year continuous NHS Grampian service, they would be eligible for a period on redeployment as detailed in the NHS Grampian Redeployment Policy and as such should be displaced at the appropriate time which may be at a different time to the review. If this period of redeployment coincides with the advertising of the post they would be eligible to apply for the post as a displaced candidate, however, if they are the only person in the organisation who is displaced at that time, and they are deemed suitable then they could be slotted-in following discussion between the Manager and Human Resources.

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 advertise.

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:

6.2.1 Check the ability to issue a permanent contract

- NHS Grampian is committed to appointing onto a **permanent contract** fixed-term employees who have continuous service of more than two years where 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 two years with successive Fixed Term Contracts; **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.

NOTE - 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 individuals contract of employment will remain fixed-term.

6.2.2 Restrictions to offering an extension to a Fixed Term Contract

- Fixed term contracts should not be renewed on more than two occasions in any one-year period, without first establishing a 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. waiting confirmation of a permanent post holder returning from maternity leave – in such circumstances it would be reasonable and justifiable to offer one-month renewals)

6.2.3 Action by manager to offer an extension to a Fixed Term Contract

Where a fixed term contract needs to be renewed, the manager should offer the employee an extension of the fixed-term contract. The manager will then arrange for an extension to the contract of employment to be issued to the employee through the

completion of a change form. The employee should also receive a letter detailing the extension to contract.

6.3 Non-Renewal of a Fixed Term Contract

Where it is known that an employee's fixed term contract will not be renewed upon expiry, the relevant manager must meet with the employee prior to the expiry date of the fixed term contract as detailed below, and outlined in the Flowchart detailed in Appendix 1.

This process will follow the provisions of the NHS Grampian Non Disciplinary Dismissal Procedure.

The employee will have the right to be accompanied at all meetings by a representative of their trade union/professional organisation or a work colleague. A representative from HR should also be present. Confirmation of the details should be issued in writing to the employee following the meeting. The employee must be advised of their right of appeal against the termination of contract.

6.3.1 Employee with less than 1 Year NHS Grampian continuous service

Manager and employee to meet no later than the contractual notice period before the end of the fixed term contract 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 to avoid the risk of having to make a redundancy payment. Capability or conduct issues would not be legitimate grounds for non-renewal, with NHS Grampian policies being applied no differently than would be the case with permanent employees);
- To advise the employee that they will be placed on the redeployment register and to discuss the redeployment process/timescales. The employee should be advised that they will remain on the register until the date of the end of the fixed term contract.

6.3.2 Employee with between 1 and 4 years NHS Grampian Continuous service

Manager and employee to meet no later than three months before the end of the fixed term contract 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 to avoid the risk of having to make a redundancy payment. Capability or conduct issues would not be legitimate grounds for non-renewal, with NHS Grampian policies being applied no differently than would be the case with permanent employees);

- To advise the employee that they will be placed on the redeployment register and to discuss the redeployment process/timescales. The employee should be advised that they will remain on the register until the date of the end of the fixed term contract.

6.3.3 Employee with more than 4 Years NHS Grampian continuous service

Manager and employee to meet no later than three months before the end of the fixed term contract 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 to avoid the risk of having to make a redundancy payment. Capability or conduct issues would not be legitimate grounds for non-renewal, with NHS Grampian policies being applied no differently than would be the case with permanent employees);
- To advise the employee that they will be placed on the redeployment register and to discuss the redeployment process/timescales. Should the employee not have gained suitable employment at the end of the period then they will remain on the redeployment register until a suitable post is found.

For more information on the redeployment process/timescales, please refer to NHS Grampian's Redeployment Policy.

7.0 Termination which meets the definition of Redundancy¹

In circumstances where the termination of a fixed-term contract meets the definition of redundancy (as described in Section 16 of the Agenda for Change Terms and Conditions handbook), the following additional requirements apply in order to ensure that the fixed-term contract is ended in line with legislation:

- 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 week's 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.
- Employees should be advised that, should they unreasonably fail to apply for suitable alternative employment opportunities which may arise or to accept

¹ Currently NHS Scotland have a no compulsory redundancy clause
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any such post offered, they may forfeit any entitlement to a redundancy payment.

8.0 Training

To support the fair and consistent application of this policy, and adherence to current relevant employment legislation, NHS Grampian 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 participated in such a programme.

9.0 Monitoring and Measuring Success

NHS Grampian 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.

Non-renewal of a Fixed Term Contract

