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USE OF FIXED-TERM CONTRACTS WITHIN NHSSCOTLAND PIN POLICY

NOVEMBER 2011

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Ministerial Foreword



NHSScotland aims to deliver the highest quality healthcare services and, through this, to ensure that NHSScotland is recognised by the people of Scotland as amongst the best in the world. The *Quality Strategy*¹ sets the overall direction for achieving this, both now and in the future, focussing on three Quality Ambitions: ‘person-centred’, ‘safe’ and ‘effective’. Delivering against all three is dependent on having a committed, dedicated, professional and healthy workforce.

I am proud of the progress made by NHSScotland Boards in striving towards exemplar employer status. Staff Governance (ensuring the fair and effective management of staff) has been enshrined in legislation, and enjoys equal status with the other pillars of clinical and financial governance. Similarly, the evolution of partnership working between employers and trade unions/professional organisations at both local and national level has helped to ensure that we have a health service in which employees are actively involved in the decisions which affect them and engaged in delivering high quality services. Indeed, the approach to employee relations within NHSScotland has been described in a recent report as “*groundbreaking*” and “*arguably the most ambitious labour-management partnership so far attempted in the UK public sector*”².

The development of NHSScotland Partnership Information Network (PIN) policies provides a means of further ensuring sound staff governance practice. They set a minimum standard of practice in the area of employment policy, helping to ensure a fair and consistent means of managing staff which meets both current legislative requirements and best employment practice. These PIN policies have been published following significant work in partnership between the Scottish Government, NHSScotland employers and recognised trade union/professional organisation partners, and following widespread consultation across the service.

These PIN policies form part of the terms and conditions of employment of all NHSScotland employees. While Boards may develop policies to meet particular local needs, I expect all Boards to adhere to the PIN policies and ensure that practice never falls short of any of the provisions set out within these policies. By doing so, we can ensure that employees are treated fairly and consistently irrespective of the part of the service in which they work.

¹ <http://www.scotland.gov.uk/Topics/Health/NHS-Scotland/NHSQuality/QualityStrategy>

² Nottingham University Business School, 2011. *Evaluating Labour-Management Partnership in NHSScotland: first-findings*.

I am asking all NHSScotland managers and leaders to ensure that they adopt and embrace the PIN policies within their Boards and within their individual roles. I am also tasking Employee Directors and Board Partnership Forums to champion these policies and to raise non-compliance in a positive and constructive manner.

These PIN policies represent an exemplar approach to employment policy and practice, and I look forward to seeing evidence of their implementation across NHSScotland in the months and years ahead.

A handwritten signature in black ink, appearing to read 'Nicola Sturgeon'. The signature is fluid and cursive, with the first name 'Nicola' written in a larger, more prominent script than the surname 'Sturgeon'.

Cabinet Secretary for Health, Wellbeing and Cities Strategy

Preface

Staff Governance

Staff Governance is defined as “a system of corporate accountability for the fair and effective management of all staff”. The [Staff Governance Standard](#)³, which is applicable to all staff employed in NHSScotland, sets out what each NHSScotland employer must achieve in order to improve continuously in relation to the fair and effective management of staff. The Standard requires that all NHS Boards must demonstrate that staff are:

- Well informed;
- Appropriately trained;
- Involved in decisions which affect them;
- Treated fairly and consistently; and
- Provided with an improved and safe working environment.

It is recognised that staff are central to achieving the principal aims of NHSScotland, namely to improve health and wellbeing, and to deliver high quality care to those with ill health. Achievement against the Staff Governance Standard is therefore key to the effective and efficient delivery of services by providing an environment that is inclusive and conducive to employees giving of their best.

NHSScotland’s commitment to staff governance has been reinforced by its legislative underpinning within the [National Health Service Reform \(Scotland\) Act 2004](#)⁴, which ensures parity with the other two governance pillars of clinical and financial governance.

PIN Policies

Partnership Information Network (PIN) policies define a minimum standard of best employment practice and are designed to achieve a consistent approach to the way NHSScotland deals with its employees. They have been developed in partnership between NHSScotland management, trade unions/professional organisations and Scottish Government. While local adaptations may be agreed in partnership to suit Boards’ own local needs, any such adaptations must still meet or exceed the minimum standards set out within the PIN policies.

³ <http://www.staffgovernance.scot.nhs.uk>

⁴ <http://www.legislation.gov.uk/asp/2004/7/contents>

Compliance with the Staff Governance Standard includes implementation of PIN policies. Boards will be expected to evidence adherence to the PIN policies as part of the annual SAAT and accountability review processes. Part 1: Principles and Partnership of the *Agenda for Change Terms and Conditions Handbook*⁵ incorporates PIN policies within the terms and conditions of employment of all NHSScotland staff and serves to further reinforce the fact that adherence to the minimum standards set out within them is mandatory for all NHSScotland Boards.

Board Partnership Forums therefore have a key role in ensuring that locally developed policies meet or exceed the minimum standards set out in the PIN policies; and in raising non-compliance in a positive and constructive manner.

⁵ <http://www.msg.scot.nhs.uk/wp-content/uploads/Agenda-for-Change-Handbook-Master-Scottish-Copy-Amendment-24.pdf>

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1 Introduction

- 1.1** NHSScotland 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.
- 1.2** The *Staff Governance Standard*⁶ states that NHSScotland 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.
- 1.3** Historically, the growth in the use of fixed-term contracts within NHSScotland has been due, in part, to the need to manage change in a cost-effective manner and to protect the position of permanent staff. The increased incidence of fixed-term pilot projects has led to an increase in the use of fixed-term contracts, as has the increased incidence of externally-funded research projects and time-limited service developments. Change is a constant feature of the NHS and must therefore be managed in a more proactive, people-centred way, through improved workforce planning.
- 1.4** In addition to the need to ensure that fixed-term contracts are only used where necessary and appropriate, NHSScotland Boards must also ensure that those who are employed on fixed-term contracts are treated fairly, with equal access to development opportunities and are subject to the same or equivalent contractual terms and conditions as comparable permanent staff.
- 1.5** NHSScotland recognises that there are two key factors to achieving the appropriate use of fixed-term contracts. Firstly, NHSScotland Boards must have robust workforce plans and projections in place. Secondly, NHSScotland Boards must establish strict criteria on the use of fixed-term contracts, which include a needs assessment being carried out to identify whether the use of a fixed-term contract is necessary and appropriate in each individual case.
- 1.6** Local agreement on the usage of fixed-term contracts is essential. This Partnership Information Network (PIN) policy sets out:

⁶ <http://www.staffgovernance.scot.nhs.uk>

- Clear principles and values on the use of fixed-term contracts;
- The legal and policy framework in which employment status is considered; and
- How robust workforce planning can aid discussion on the use of fixed-term contracts.

1.7 The PIN also includes a model policy on the use of fixed-term contracts for NHSScotland Boards, which will be the basis for reaching local agreement. Whilst Boards may wish to develop their own local policy, in partnership, on the use of fixed-term contracts, such local policy must either meet or exceed the provisions of this PIN policy.

Furthermore, NHSScotland Boards must, in partnership, monitor their use of fixed-term contracts on an ongoing basis with a view to ensuring the fair and consistent application of their local policy. Boards must review the policy regularly, to ensure that it remains fit for purpose, so as to enable them to demonstrate adherence to this PIN, and to the wider [Staff Governance Standard](#)⁷ as part of the national monitoring process.

⁷ <http://www.staffgovernance.scot.nhs.uk>

2 Main Report

2.1 Scope

2.1.1 This PIN policy applies to staff employed on a fixed-term contract basis as defined below (including locum medical staff where directly employed by NHSScotland organisations and where such employment meets the definition of a fixed-term contract as defined below).

2.1.2 The following groups are outwith the scope of this PIN 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 PIN Policy*⁸ indicates best practice relating to secondment, and the *Agenda for Change Terms and Conditions of Service Handbook*⁹ outlines the basis for acting up.

2.2 Principles & Values

2.2.1 All employees within NHSScotland Boards should be valued for the contribution they make to the service. As exemplary employers, NHSScotland Boards must be committed to using permanent contracts of employment as the norm. The benefit of such an approach is that employers can:

- Provide better continuity of care;
- Improve staff morale and motivation by providing increased financial and personal security;
- Reduce staff turnover and improve the retention of skilled staff;
- Make more effective use of resources invested in staff development and recruitment advertising; and

⁸ <http://www.staffgovernance.scot.nhs.uk>

⁹ <http://www.msg.scot.nhs.uk/wp-content/uploads/Agenda-for-Change-Handbook-Master-Scottish-Copy-Amendment-24.pdf>

- Promote improved workforce planning and staff flexibility by developing the skills of permanent staff in anticipation of changing service needs.

2.2.2 Consideration should therefore always 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).

2.2.3 Fixed-term contracts should only be used in defined exceptional circumstances and will be clearly time- or task-limited. It should be recognised that, while fixed-term contracts need to be used in some circumstances, advertising a post on a fixed-term basis may deter existing permanent staff from applying, thereby potentially limiting career development opportunities.

2.2.4 It is therefore expected that NHSScotland Boards commit to:

- Ensuring that a partnership approach is used as the vehicle by which local agreement on implementation of this PIN policy is reached;
- Promoting adherence to these same principles and values by partner agencies;
- Minimising the use of fixed-term contracts to situations where there is a genuine organisational need for their use;
- Complying with the terms of the *Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002*¹⁰;
- Reviewing and monitoring the use of fixed-term contracts in partnership with staff and their representatives in line with the *Staff Governance Standard*¹¹;
- Ensuring that all fixed-term contracts specify the start date, duration and the reason for the fixed-term nature of the contract;
- Ensuring that, fixed-term contracts contain the same core contractual terms and conditions of employment as permanent staff;

¹⁰ <http://www.legislation.gov.uk/ukxi/2002/2034/contents/made>

¹¹ <http://www.staffgovernance.scot.nhs.uk>

- Ensuring that the length of the fixed-term contract reflects the needs of the role to be covered;
- Ensuring that, for good practice reasons, a fixed-term contract is not renewed on more than two occasions in any one-year period, without first establishing an objective justification;
- Ensuring good employment practice is implemented on an equal basis for both permanent and fixed-term staff;
- Ensuring that appropriate communication takes place with individual fixed-term members of staff to discuss issues surrounding their employment status and address any concerns; and
- Ensuring that, through implementation of the above, all fixed-term members of staff can expect to:
 - 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
 - Be given the opportunity to apply for a permanent contract if a suitable position arises.

2.3 Definitions

2.3.1 Employee

An individual who works under a contract of employment (i.e. a contract **of** service rather than a contract **for** services).

2.3.2 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.

2.4 Legal & Strategic Framework

2.4.1 Legal Framework

2.4.1.1 *The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002*¹²

These Regulations implement the European Community (EC) Directive on fixed-term work in the UK, providing protection for fixed-term employees, including:

- The right not to be treated less favourably than comparable permanent employees because they are on a fixed-term contract, unless there are ‘objectively justifiable’ circumstances for doing so. This includes the right to be informed of any permanent vacancies in an organisation, and be given the same opportunity as others to apply for such roles; and
- The right to permanency of employment if a fixed-term employee has their contract renewed, or are re-engaged on a new fixed-term contract, after four or more years of continuous employment, unless there are ‘objectively justifiable’ circumstances for not doing so.

2.4.1.2 *Employment Rights Act 1996*¹³

At the time the 2002 regulations came into force, the redundancy provisions set out in this Act were amended to provide that, in certain circumstances, a fixed-term employee would be treated as being dismissed by reason of redundancy.

- *Section 136* states that the employee is “*dismissed by the employer if ... he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract*”; and
- *Section 139* states that, if the contract is not renewed because the need for employees to carry out work of a particular kind has ceased or diminished, the dismissal is by reason of redundancy.

Where a fixed-term employee is dismissed by reason of redundancy, they are entitled to all redundancy rights, including redundancy pay, if they have the necessary length of service.

¹² <http://www.legislation.gov.uk/ukxi/2002/2034/contents/made>

¹³ <http://www.legislation.gov.uk/ukpga/1996/18/contents>

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.

2.4.1.3 *National Health Service Reform (Scotland) Act 2004*¹⁴

This Act amends the *National Health Service (Scotland) Act 1978* in a number of respects, including the introduction of a duty in relation to the governance of staff at section 12I.

- *Section 12I*

It shall be the duty of every Health Board and Special Health Board and of the Agency to put and keep in place arrangements for the purposes of -

- Improving the management of the officers employed by it;*
- Monitoring such management; and*
- Workforce planning.*

This section aims to ensure that staff governance has equal legislative parity with the rest of the governance framework (clinical and financial governance) within which NHSScotland employers must operate. The *Staff Governance Standard*¹⁵ is the key policy document to support this legislation.

As part of Boards' obligations in relation to Staff Governance, and specifically workforce planning, they should ensure that fixed-term contracts are managed appropriately.

2.4.2 **Strategic Framework**

2.4.2.1 *Staff Governance Standard*¹⁶

Particularly relevant in the context of the Staff Governance Standard (referred to in the preface of this PIN), is the requirement for staff to be treated fairly and consistently, regardless of employment or contractual status, and to be well informed in relation to their contractual status.

Assessment of organisational progress in relation to the Standard is carried out by each Board's Area Partnership Forum (or equivalent) through the self-assessment audit tool (SAAT)

¹⁴ <http://www.legislation.gov.uk/asp/2004/7/contents>

¹⁵ <http://www.staffgovernance.scot.nhs.uk>

¹⁶ <http://www.staffgovernance.scot.nhs.uk>

and staff survey. The Area Partnership Forum (or equivalent) then produces an action plan and completes mandatory quantitative (statistical) and qualitative returns – including information and reasons relating to organisational use of fixed-term contracts¹⁷ – which are subject to external audit. This information is then used in the Annual Review process by the Scottish Government.

2.4.2.2 *National workforce strategy*

Explicitly referred to in the *National Health Service Reform (Scotland) Act 2004*¹⁸, workforce planning is recognised as one of the key strategic foundations on which organisational development and redesign must be built, and the national workforce strategy sets out how this will be taken forward for NHSScotland. Clearly, appropriate contractual status of staff – including the use of fixed-term contracts – is an integral part of the process of workforce planning and development.

2.5 **Appropriate Use of Fixed-Term Contracts**

2.5.1 In certain exceptional circumstances, fixed-term contracts may be a valuable tool to enable employers 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 otherwise objectively justified).

2.5.2 Good workforce planning will help to appropriately identify situations where fixed-term contracts are necessary (NHSScotland guidance on workforce planning can be found at <http://www.workforceplanning.scot.nhs.uk>).

2.5.3 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.

¹⁷ This return now supersedes the information required by MEL (1999) 28

¹⁸ <http://www.legislation.gov.uk/asp/2004/7/contents>

- 2.5.4** Staff employed on a fixed-term basis are not generally disadvantaged by NHS terms and conditions of service. However, entitlement to redundancy payments may play a role in determining the duration of contracts, and this could disadvantage the employee. The wish to avoid the risk of having to make a redundancy payment in the future would be an inappropriate justification for non-renewal of a fixed-term contract. However, managers need to be aware that the expiry of a fixed-term contract may be deemed to be a redundancy situation in circumstances as set out under the 1996 Act above.
- 2.5.5** A further important decision, linked to the above, is whether to permit the appointment of those with continuous service within the NHS to fixed-term contract roles, where non-renewal upon expiry may be deemed to be a redundancy situation and given that such service may result in potentially higher redundancy costs. Where such individuals are already permanent employees of the same organisation, and where the organisation wishes to permit their appointment to a fixed-term post, it should 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.
- 2.5.6** Where a fixed-term contract is being used due to services being offered only short-term funding for such posts, agreement should be reached with the funding body that any exit costs associated with the non-renewal of the fixed-term contract will be covered or, alternatively, posts should be offered for a lesser period to ensure that funding is sufficient to cover any exit costs.
- 2.5.7** When considering whether to appoint to a post on a fixed-term basis, managers should follow the needs assessment framework outlined in Annex A of the model policy attached at Appendix 1. Where the decision is taken to use a fixed-term contract, the reason for doing so must be recorded by the line manager.
- 2.5.8** 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].”*

2.6 Reviewing Fixed-Term Contracts

2.6.1 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.

2.6.2 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 process for renewal of a fixed-term contract, as detailed below, 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 non-renewal of a fixed-term contract, as detailed below, to be followed.

2.6.3 Requirement to Make the Post Permanent

Where an organisation determines a need for a fixed-term role to be carried out on a permanent basis, the post would require to be advertised in the normal way and any employee currently undertaking such a role on a fixed-term contract basis would be required to apply. However, given that as a result of the above, the employee's fixed-term contract would not be renewed upon expiry, they would be eligible to apply for such a permanent post via redeployment.

However, depending upon whether the criteria set out in 2.6.4 are met, there may not be such a requirement to advertise the post in the normal way, and the fixed-term employee would be automatically appointed to the permanent role.

2.6.4 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:

- NHSScotland Boards will commit to the appointment of staff who have continuous service of more than two years (within successive fixed-term contracts) 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 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.)
- However, organisations should 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 the Board, 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.

Organisations 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'.

2.6.5 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 their role prior to its agreed point of expiry, the organisation 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.

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 employers instead expected to apply local employment policies, as appropriate, no differently than they would 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;
- To confirm, where appropriate, any redundancy payment which will apply should suitable alternative employment not be obtained;
- 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 preparation, interview skills etc.

In the case of non-renewal of a fixed-term contract upon expiry (irrespective of the reason for the fixed-term contract), access will be granted to redeployment vacancies, in line with the *Redeployment PIN Policy*¹⁹, no earlier than three months and no later than running concurrent with the employee's notice period. It should be noted that while a legal obligation to explore suitable alternative employment only exists in circumstances where the non-renewal of a fixed-term contract meets the definition of redundancy, this PIN policy goes beyond the legislation requiring that access to redeployment be granted in the case of all instances of such non-renewal of a fixed-term contract. However, employers are advised that, where more than one applicant applies for a post via redeployment and more than one is appointable, prioritisation should be given depending upon the reason for displacement from the original post (particularly whether or not a legal obligation exists to explore suitable alternative employment).

Reasonable time off will be given by the manager for the employee to attend interviews during the above period.

If the employee has not secured an alternative post prior to the end of their notice period, their employment will be terminated as per the earlier meeting.

2.6.6 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

¹⁹ <http://www.staffgovernance.scot.nhs.uk>

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*²⁰. 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.

- 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.

2.6.7 Further details on the process to be followed is contained within the *Redeployment PIN Policy*²¹.

2.7 Training

To support full implementation of this PIN policy locally, it will be essential for NHSScotland employers to ensure full awareness and understanding of the issues relating to fixed-term contracts. This may best be achieved by incorporating this into local management development programmes.

²⁰ <http://www.msg.scot.nhs.uk/wp-content/uploads/Agenda-for-Change-Handbook-Master-Scottish-Copy-Amendment-24.pdf>

²¹ <http://www.staffgovernance.scot.nhs.uk>

2.8 Monitoring

The use of fixed-term contracts will be monitored at national, Board and service level.

2.8.1 National

All NHSScotland employers are required to submit information on the use of fixed-term contracts as part of the staff governance self-assessment audit tool (SAAT). This forms part of the performance assessment framework for NHS Boards and is used to promote consistent standards across NHSScotland.

2.8.2 Board

The Area Partnership Forum (or equivalent) will monitor the development of integrated workforce plans and the organisational learning plan, with a view to promoting the successful redeployment of staff across the area. Part of this monitoring may include analysing qualitative information gained from exit interviews or questionnaires completed by fixed-term staff (see Section 2.9 below). Divisional partnership structures may also wish to discuss this.

2.8.3 Service

Arrangements will be agreed locally for reviewing fixed-term contracts, in partnership, on a quarterly basis within each service area or directorate.

2.9 Success Criteria

This policy aims to encourage NHSScotland employers to:

- Use fixed-term contracts only in appropriate circumstances; and
- Ensure staff on fixed-term contracts are fully aware of the current and planned future status of their post, and are provided with equal access to development opportunities.

While the reduction in the use of fixed-term contracts largely depends on the development of integrated workforce plans and service learning and development plans, the success of a policy on the appropriate use of fixed-term contracts will be measured through:

- Quantitative data supplied in the SAAT (numbers of, and reasons for, fixed-term contracts); and
- Qualitative data.

Qualitative data to measure application of Boards' local policies may be gathered through the use of exit interviews/questionnaires. This type of questionnaire should explore the extent to which individual fixed-term employees felt that they:

- Had equal access to development opportunities;
- Were kept informed about the current and likely future status of their post;
- Had the opportunity to discuss any issues of concern; and
- Had the opportunity to apply for suitable alternative employment within their employer's organisation.

Each organisation will wish to analyse the information from exit interviews/questionnaires, for the Area Partnership Forum (or equivalent) to consider along with other workforce information and issues.

Appendix 1

Model Policy on the Use of Fixed-Term Contracts

1 Policy Statement

All employees within *[name of organisation]* are valued for the contribution they make to the service, regardless of their contractual status. *[Name of organisation]* is committed to using permanent contracts of employment as the norm, with fixed-term contracts only being used where necessary and appropriate. Furthermore, *[name of organisation]* 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 NHSScotland staff should be treated fairly and consistently, and *[name of organisation]* 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 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).

3 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 Principles & Values

[Name of organisation] 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 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.

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 non-recurring 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, *[name of organisation]* reserves the right to refuse any such appointment. Where existing permanent employees apply for fixed-term contract roles, and where *[name of organisation]* 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.

6 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 non-renewal 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, the post requires to be advertised in the normal way and any employee currently undertaking such a role on a fixed-term contract basis would

be required to apply. However, given that as a result of the above, the employee's fixed-term contract would not be renewed upon expiry, they would be eligible to apply for such a permanent post via redeployment.

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 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:

- *[Name of organisation]* 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**:
 - 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 *[name of organisation]*, 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, *[name of organisation]* 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.

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 *[name of organisation]*'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;
- To confirm, where appropriate, any redundancy payment which will apply should suitable alternative employment not be obtained;
- 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 preparation, interview skills etc.

In the case of non-renewal of a fixed-term contract upon expiry (irrespective of the reason for the fixed-term contract), access will be granted to redeployment vacancies, in line with *[name of organisation]*'s local policy developed in line with the *Redeployment PIN Policy*, no earlier than three months and no later than running concurrent with the employee's notice period. Further details on the process to be followed is contained within *[name of organisation]*'s local policy developed in line with the *Redeployment PIN Policy*. It should be noted that while a legal obligation to explore suitable alternative employment only exists in circumstances where

the non-renewal of a fixed-term contract meets the definition of redundancy, this policy goes beyond the legislation requiring that access to redeployment be granted in the case of all instances of such non-renewal of a fixed-term contract. However, where more than one applicant applies for a post via redeployment and more than one is appointable, prioritisation should be given depending upon the reason for displacement from the original post (particularly whether or not a legal obligation exists to explore suitable alternative employment).

Reasonable time off will be given by the manager for the employee to attend interviews during the above period.

If the employee has not secured an alternative post prior to the end of their notice period, their employment will be terminated as per the earlier meeting.

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.
- 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. 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.

7 Training

To support the fair and consistent application of this policy, and adherence to current relevant employment legislation, *[name of organisation]* 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.

8 Monitoring & Measuring Success

[Name of organisation] 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:
 - Had equal access to development opportunities;
 - Were kept informed about the current and likely future status of their post;
 - Had the opportunity to discuss any issues of concern; and

- 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 Review of Policy

This policy will be reviewed, in partnership, by *[name of organisation]* on an annual basis.

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

	High	Medium	Low
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/financial impact			
Consideration of clinical and corporate risk			

Appendix 2

PIN Policy Review Group

Members:	Michael Brown	Royal College of Nursing
	Noreen Clancy	Head of Employee Relations, NHS Lothian
	Caroline A Fee	Staff Governance Associate, Scottish Government
	Darren Paterson	Staff Governance Associate, Scottish Government
	Lynne Paterson	Head of Employment Relations, NHS Ayrshire & Arran
	Claire Ruxton	Deputy Director of HR, NHS Grampian
	Mary Samson	UNISON