



Workforce

Fixed-term Contract Policy: guide for managers

This guide will help managers to understand how to apply the Fixed-term Contract Policy appropriately.

The following guide forms part of the standard for workforce policies. These policies apply to all eligible staff within NHS Scotland, regardless of the board they are employed by. The guide covers:

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What is the purpose of the Fixed-term Contract Policy?

The policy's purpose is to help you identify situations where fixed-term contracts are appropriate and to manage such contracts properly. It should also make sure employees on fixed-term contracts are treated no less favourably than those on permanent contracts unless objectively justified.

Who is covered by this policy?

This policy applies to all employees on a fixed-term contract, including doctors and dentists in training and locum medical staff directly employed by NHSScotland organisations. The policy does not apply to bank staff, agency workers, or apprentices with regard to entitlements. Terminating an apprenticeship is still a dismissal, and you must follow the appropriate process to terminate a contract.

Any employees seconded to a fixed-term post remain under the Secondment Policy and should be managed in line with that policy. [Find out more about the Secondment Policy](#).

Manager's responsibilities

As a manager, you need to be aware of several time-critical elements when managing a fixed-term contract. These largely relate to ending the contract and making sure the employee has opportunities for continued employment where possible. You, therefore, have the following responsibilities:

- Review the status of the contract on a timely basis. This is to make sure the employee is formally aware of the end of the contract with reasonable notice.
- Keep the employee informed of the status of the fixed-term contract. This is to make sure the employee knows if the contract will be extended or made permanent. It will also allow them to make informed decisions about other employment options.
- Support the employee through the period of employment and signpost them to sources for permanent employment. The uncertainty of a lack of permanent employment can impact employees on a fixed-term contract.

- Support the employee's access to development opportunities. They have the same rights to access development as permanent employees. This may assist them in finding permanent employment.
- If the contract is not to be renewed, engage with the appropriate redeployment contact so that the employee can gain permanent or extended employment.
- Make sure the employee receives the defined period on redeployment before the contract end date. Ideally, the employee should be able to access redeployment for the same period as other employees, which is 3 months. However, they must, at the very least, be on redeployment for the period of their contractual notice.
- Be aware of the potential cost implications of redundancy or contract extension. If the post is fixed-term due to funding or a fixed project, the employee may be entitled to a redundancy payment or protection if the post ends. You may wish to consider this in any funding application you make.
- Update appropriate systems to make sure that any contract extensions are processed through the appropriate systems. Contractual documentation can then be issued. This ensures that there is no scope for the contract to continue beyond its expiry date.

Use of fixed-term contracts

Fixed-term contracts should only be used where necessary and for as short a period as possible. Normally, this would be for 2 years or less. There will be certain situations where a contract may need to be extended. However, it should not normally be renewed on more than 2 occasions within a year. Although employees are on a fixed-term contract, clarity and certainty are important.

Fixed-term contracts may be appropriate in the following situations:

- Cover for long-term sickness absence, maternity leave, extended study leave, secondments, or career breaks.
- To protect posts for permanent staff where services are being restructured or redesigned. There may be situations where a service is ending, but staff can't be immediately released for permanent posts under redeployment. On that basis, someone can

be employed to cover the vacancy until the permanent staff member can be released.

- Posts without permanent funding. For example, short-term initiatives that are funded through time-limited monies.
- Project or research posts where the work will end once the project or research is complete.

Fixed-term contracts should not be used to test an employee's suitability. The reason should be related to the post, not the person.

When you have decided a fixed-term post is appropriate, you should make clear the length and reason for the fixed-term contract when recruiting to the post. You should also start to consider the exit strategy to make sure the employee has the best opportunity for permanent employment.

Reviewing the fixed-term contract

As the manager, you need to keep the employee informed about the future of their employment. Under the policy, you need to meet with the employee at the mid-point of the contract and regularly after that, particularly if there are any changes. You should confirm the content of any discussion in writing so there is a record of what has been discussed.

There are 3 options which may arise during such discussions:

- no change to the length of the contract, and it will end at the date of the original contract
- the contract will be extended
- the post will be made permanent

It is important within these discussions to make sure that you are managing the employee's expectations in relation to possible extensions or permanent posts. No guarantee of permanent employment should be offered without a robust recruitment process.

Ending the fixed-term contract

If the contract is to end, you should meet with the employee with sufficient time to allow access to redeployment. The access period for employees displaced due to non-renewal of a fixed-term contract can be for up to 3 months. However, it should be no less than their contractual

notice period. In both scenarios, the period on redeployment should end on the final day of the contract.

At the meeting, you should formally confirm that the contract will end in line with the employment contract. As the meeting is to confirm the content of an existing contractual document, a panel is not required to consider the decision.

Following the meeting, you should confirm the discussion details in writing within 7 days. As the fixed-term contract ends with a dismissal, you should confirm the employee's right of appeal. If the employee appeals, you will be required to present a case to a dismissal appeal panel.

Renewing the fixed-term contract

You should not renew the initial contract more than twice within 12 months or for less than 3 months unless there are clear, objective, specified reasons. If you need to renew the fixed-term contract, you should discuss this with the employee to seek their agreement. You should arrange a variation to the contract of employment to be issued to the employee using your local procedure.

You should make sure fixed-term contract employees do not work past the specified expiry date of their contract. If you have not renewed the contract, there is a risk that it may be considered open-ended.

If an employee has successive fixed-term, continuous contracts totalling more than 4 years with your board, they have a legal right to permanent contractual status. However, there may be occasions where the employer can objectively justify continued fixed-term contracts.

If the post becomes permanent, the employee with over 4 years of successive fixed-term contracts should be permanently appointed to the post. There is no need for a formal recruitment process. If the post ends, you will be required to find permanent employment for the employee via redeployment. The employee will remain your responsibility until a suitable alternative post is found.

In the case of consultant appointments, existing recruitment processes should be followed if the post or the individual becomes permanent.

In addition to the legal entitlement to permanent status after 4 years, NHSScotland has committed to permanently appointing employees with

more than 2 years of continuous service in some situations. This is where they have held continuous fixed-term contracts for more than 2 years specifically to protect posts for permanent staff due to planned organisational change, service reconfiguration, or redeployment.

Recurring funds for the post beyond the 2 years must also be available. Both criteria must be met in full for the employee to qualify for permanent status after 2 years. For further information, contact the HR department.

Making the post permanent

If the post is made permanent, the employee cannot be automatically appointed unless they are eligible for permanent contractual status. You must, therefore, advertise the post, and the employee in the fixed-term contract can apply. If the employee is on the redeployment register as their contract is due to end, they may be considered for the post under the redeployment process.

It is important to note the different approaches, whether it is the employee or the post that becomes permanent.

Redundancy and non-redundancy fixed-term contracts

When supporting an employee whose fixed-term contract has ended, it is important to know whether it is a redundancy or non-redundancy situation for redeployment purposes. What determines this is what happens to the post, not the employee.

Where the post no longer exists, this is a redundancy situation. This is most likely to occur when short-term funding has been provided, or a specific project has ended. Redeployment will be made available before the employee's contract end date. If redeployment is not successful in this period then their contract will be terminated.

Where the post continues, this is not a redundancy situation. This is most likely to occur when the contract has been to cover maternity, sick leave, a vacancy or part of a recurring training programme.

This difference is important as it will determine the priority given to the employee on redeployment. It will also determine if they are entitled to a redundancy payment or protection. Under employment law, employees

on fixed-term contracts must be treated no less favourably than a permanent employee in the same position unless objectively justified. Where the post no longer exists, they should normally be considered the same as staff under organisational change, whose post no longer exists. On this basis, protection may be required.

If the post no longer exists and the employee has more than 104 weeks of continuous service, they will be entitled to a redundancy payment. Any prior continuous NHS service will count towards the total entitlement, even if you have just employed them for the length of the fixed-term contract.

If the service is with more than one NHS employer, there must not have been a break of more than a week, measured Sunday to Saturday, between employments. The policy allows you not to appoint a candidate to a fixed-term contract where they have previous service for this reason.

The national agreement does not cover redundancy situations related to the end of a fixed-term contract, as these are not considered compulsory redundancies. The employee has entered into a contractual agreement for a fixed period only.

[Learn more about the Scottish Government's No Compulsory Redundancy Policy, which also covers NHS bodies.](#)

Permanent employees in fixed-term contracts

If one of your permanent employees applies for a fixed-term contract, this would normally be supported under the [Secondment Policy](#).

If you cannot support the employee's request for a secondment, you should inform them that if they apply for and accept the post, they will give up their permanent contract. They must resign, and their contract will be terminated with a new contract offered. Their employment will end at the expiry of the fixed-term contract unless they are successful through redeployment.

If you are recruiting to a fixed-term post and a permanent employee applies, you should make sure their manager agrees to a secondment. If not, and they proceed with their application, you should advise them to follow the procedure outlined above.

If you are recruiting for a fixed-term post, the policy allows you not to appoint a permanent employee because you may have to fund redundancy entitlements related to their previous service.

Pregnant employees in fixed-term contracts

If an employee on a fixed-term contract becomes pregnant, their contract must be extended to allow them full entitlement to maternity leave and pay where eligible.

Redeployment access should commence before the end of the maternity period to ensure opportunities are available to coincide with the end of the maternity leave. If no suitable posts are available, the contract will end when the maternity leave ends.

The clarification of the redundancy or non-redundancy situation is also relevant in such cases. If the post ended in a redundancy situation, qualifying service for a redundancy payment includes the period on maternity leave.