



Public – To be published on the Trust external website

Title: Temporary Agency and Self-employed Workers Procedure

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1 Introduction

From time to time the Trust may experience extreme staffing difficulties, and after considering all alternatives, need to secure the use of temporary agency or self-employed workers to maintain service provision or specific project.

This procedure ensures an auditable approach to compliance of those requirements throughout the lifetime of any temporary working arrangements.

Due to the high cost of employing temporary agency staff, the Crown Commercial Service (formerly the Government Procurement Service) provide procurement savings in the UK public sector to deliver centralised procurement for central government departments. These are known as approved agencies.

To co-create a great experience for our patients, carers and families, so you will experience:

- **Outstanding** and compassionate care, all of the time.
- **Access** to the care that is right for you.
- **Support** to achieve your goals.
- **Choice** and control.

To co-create a great experience for our colleagues, so you will be:

- **Proud**, because your work is meaningful.
- **Involved** in decisions that affect you.
- **Well led** and managed.
- That your workplace is **fit for purpose**.

To be a great partner, so we will:

- Have a **shared understanding** of the needs and the strengths of our communities
- Be **working innovatively** across organisational boundaries to improve services.
- Be **widely recognised** for what we have achieved together.

2 Purpose

Following this procedure will help the Trust to use approved agencies from the Crown Commercial Service and remain compliant with the Agency Workers Regulations (AWR) 2011.

Situations can arise which may require additional temporary agency workers including:

- Covering vacant posts on a temporary basis whilst recruiting to them, or that have proven to be difficult to fill.

- Increased additional national pressures on the service e.g. maintaining/reducing waiting times
- Short term funding for specific projects where other employees are not available through secondment or a re-alignment of work.
- Covering essential work where staff are unavoidably absent.
- High acuity

3 Who this procedure applies to

This procedure applies to all staff who appoint Temporary agency workers or Self-employed workers within Tees, Esk and Wear Valleys NHS Foundation Trust.

This does not apply to Nursing, Medical Staffing and Administrative Agency cover.



It is the Responsibility of the Recruiting Manager to ensure local protocols relating to the use of agency staff are followed.

4 Related documents

This procedure refers to

- [Recruitment and Selection Procedure](#)
- [Disclosure and Barring service \(DBS\) procedure](#)
- [Verification and registration of health care employees procedure](#)
- [Temporary Staffing Operating Protocol for inpatient services](#)

5 Process

5.1 Requesting Manager

Where Temporary Agency workers are required, authorising managers should use Crown Commercial Service approved agencies only.

Crown Commercial Service agencies provide a range of temporary staff groups such as nursing, allied health professionals, medical and administrative workers who are accessed through various approved framework agreements. Approved framework agreements are

created by type therefore Clinical staffing will access suppliers via a different framework agreement for agency supply to non-clinical staffing etc.

A full list of Crown Commercial Service agencies can be found at their website under the “Search Supplier” section at www.crowncommercial.gov.uk/suppliers

- Consider all alternatives to using agency or self-employed workers before outsourcing.
- Consider the duties and duration of the placement.
- Identify the appropriate pay band by producing a job description and person specification (existing job descriptions should be used where possible) to achieve an Agenda for Change band outcome. If the post is a new post that does not exist in the Trust e.g. bespoke one-off projects, this will not require a full evaluation, unless it is later recruited on a substantive basis in line with the Job Evaluation Procedure. If the post is new, email a copy to the Job Evaluation Team who will make an assessment of the provisional Agenda for Change banding.



For nursing or nursing support roles, please see Temporary Staffing Operating Protocol for Inpatient Services (Nursing and HCAS only)

For Administrative roles there is no option to seek Agency cover. Services are requested to look at internal solutions.

For Medical (not including nursing), please complete Appendix 6 and email teawvnt.medicalstaffing@nhs.net

5.2 Recruiting Manager Responsibilities

- To follow local protocols relating to the use of **agency workers**
- Interview where appropriate and necessary
- Completion of the Temporary Workers / Self Employed Workers Form (appendix 3) and keep on file along with relents documentation / evidence.
- To maintain evidence that the necessary NHS pre-engagement checks relevant to the post have been carried out e.g.
 - Pre-employment health clearance
 - Disclosure and Barring Service clearance and if application an overseas police check (i.e if they have been outside of the county for 6 months or are an internal workers)
- Professional registration is in date with no restrictions

- References covering the previous 2-year period
- To maintain a record of the personal details, skills and competences of the worker. This is usually in the form of a CV
- To maintain a copy of any driving license and/or insurance certificates that may persist during the life of the contract if the role requires it.
- To ensure that the temporary worker completes the mandatory and statutory training that would be standard for the role including information governance
- Agree a mutual commencement date. Once a mutual start date is agreed, the agency will email a copy of the contract.
- Undertakes an appropriate and robust local induction programme
- Retain all signed documentation relating to induction and timesheets, with copies to be held locally.
- If the temporary agency assignment exceeds the 12-week qualifying period, the recruitment agency will contact the recruiting manager to discuss what entitlements the agency worker will now be entitled to
- Communicate with the recruitment agency when the contract is to be terminated and provide any relevant notice in line with the contract conditions
- To review the duration and cost effectiveness of the agency or self-employed worker assignment and retain evidence of the authority to recruit and reasons for any agreed extension to the original request.
- To authorise invoices in a timely manner.
- To notify any issue/concern over an individual e.g. sickness absence, punctuality, competence etc to the recruitment agency and link with the Human Resources operational department where necessary.
- The Agency Workers Regulations were introduced 1st October 2011 entitling agency workers to the same or no less favourable treatment for basic employment and working conditions after they complete a qualifying period of 12 weeks in a particular job.
- The right to equal treatment will not apply until an agency worker has worked in the same (or significantly similar) role for a hirer for twelve qualifying weeks. The qualifying period is analogised as a clock which can be reset, paused or continue to “tick”. For guidance on calculating the twelve-week qualification, please see appendix 4.

- If a current temporary agency worker is successful at interview and consequently becomes a permanent employee, provide due notice to the agency to avoid the Trust paying a placement (finders) fee.
- Ensure that relevant notice has been provided to the recruitment agency if a temporary worker has subsequently recruited as an employee of the Trust, so that an introduction fee will not be charged and inform Recruitment Team.



The recruiting manager should review assignments on an on-going basis. This review should address:

- The continuing need for the work
- Whether alternatives have now become available that can be considered
- The standard of work performance
- Progress against agreed targets and requirements
- The expenditure incurred

5.2.1 Process to engage Self-Employed workers

Engagement of Self-Employed Contractors should only be considered where employment, Bank and Agency options are not available or are not viable. (For example: if Agency arrangements are not specialist enough to meet the resourcing requirements.)

The Trust cannot enter into any engagement with a self-employed contractor (including via a Personal Service Company (PSC)) in circumstances where the HMRC Employment Status assessment tool has confirmed that Tax and National Insurance deductions are required as for an employee.

Engagement of self-employed Contractors should be limited to circumstances where the Trust is engaging an individual to provide a defined service rather than engaging a person in a work role. This will mean that the contract with the person is for a set of defined outcomes and is not on the basis of a range of tasks akin to a job description.

The Recruiting Manager must:

- Consider why alternatives to using self-employed workers are not available or appropriate.
- Agree the scope of work, requirements, and duration internally.
- Contact the Finance department to confirm that funding is available to support the full length of the assignment
- Independent contractors and self employed workers can only be appointed with the explicit authority of the Care Group Director. There are

strict requirements relating to liability insurances which must be checked and contractual documentation must be in line with legal requirements. It is essential that contract documentation is agreed with Human Resources.

- Starts to complete the record at Appendix 3
- Create a file containing the information in appendix 3 and any other relevant information.
- The Manager must complete the HMRC Employment Status assessment tool [Check employment status for tax - GOV.UK \(www.gov.uk\)](https://www.gov.uk) Prior to confirming any role within the Trust. It is the responsibility of the Manager to complete this and it must not be delegated.



• If the outcome of the HMRC Employment Status assessment tool is that the engagement should be classed as Employed for Tax purposes then the engagement **MUST NOT CONTINUE**.

The outcome must be kept on file.

- When the outcome from the HMRC Employment Status assessment is that the nature of engagement is a self employed one for tax purposes, the engagement with the self employed worker can continue.
- Carries out face to face interviews where appropriate and necessary.
- Contacts the relevant self-employed worker with the details and requirements of the work and the contract terms and insurance requirements.
- Ensures that all necessary checks associated with the work are processed and evidenced e.g. identity, right to work in the UK, professional registration, DBS, occupational health, references
- Ensures that evidence of self-employment status e.g. Certificate of Incorporation, VAT registration, or other appropriate HMRC documentation is seen and copies held on file.
- Ensures that contract terms have been signed and that insurance certificates including employers liability, public liability, professional indemnity are appropriate and copies are held on file.
- Undertakes an appropriate and robust local induction programme
- Books mandatory training including IT network access training unless evidence of completion in previous assignments.

- When the contract is terminated it is carried out in a legal manner with any relevant notice provided in the correct format in line with the contract conditions to the appropriate self-employed worker.



The recruiting manager should review assignments on an on-going basis. This review should address:

- The continuing need for the work
- Whether alternatives have now become available that can be considered
- The standard of work performance
- Progress against agreed targets and requirements
- The expenditure incurred

5.3 People and Culture Responsibilities

Temporary Staffing will monitor all nursing and admin agencies being used by the Trust to assure the Trust that the agencies are able to meet NHS pre-engagement requirements.

- To highlight to Executive Director Group any agencies who cannot assure the Trust that they are able to meet NHS pre-engagement requirements and take appropriate measures.
- To maintain a database of all agency staff in the Trust to ensure compliance with the AWR (2011) where applicable.
- To provide regular reports on agency usage and compliance with the AWR (2011).
- To provide advice on the AWR (2011) and the implementation of this procedure
- All agencies will be monitored for compliance by the Human Resources department for assurance against the Crown Commercial Service and NHS employment standards.
- To check and monitor liability insurances and contractual documentation must be in line with legal requirements. It is essential that contract documentation is agreed with Human Resources.

5.4 Finance Department Responsibilities

- To ensure that appropriate contract terms are proposed for self-employment

- To ensure budget is identified to support the proposed contract cost
- To ensure procurement legislation and SFIs are followed when awarding the contract
- To ensure the requirements of IR35 and other legislation is considered
- To monitor Trust expenditure on agency and self-employed workers to ensure value for money.
- To process invoices in a timely manner and in accordance with standing financial instructions.
- To provide monitoring reports for directorates and the Trust and make recommendations relating to those reports.

5.5 Other Responsibilities

- Medical staffing will maintain a separate record of medical agency staff
- Temporary Staffing will maintain a separate record for Nursing agency staff
- Any other usage will be maintained by the relevant service.

6 Definitions

Term	Definition
Agency worker	An individual who has a contract with a temporary work agency and who is supplied by that agency to work temporarily under the supervision and direction of a “hirer” (the Trust)
Temporary Agency	An organisation that is in the business of supplying individuals to work temporarily for hirers.
Self-employed person/Worker	An individual who is registered with HMRC in their own right or as a business and is responsible for paying their own tax and national insurance and who has their own insurances.

7 How this procedure will be implemented

This procedure will be published on the Trust’s intranet and external website.

7.1 Training needs analysis

N/A

8 How the implementation of this procedure will be monitored

Number	Auditable Standard/Key Performance Indicators	Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	Audits to monitor and measure compliance with the requirements of the policy across the organisation will be conducted in line with the approved audit cycle (NHSi Reporting).	Finance	

9 References

Agency Worker Regulations 2011

Crown Commercial Services

Crown Commercial Service Website: www.crowncommercial.gov.uk

Disclosure and Barring Service

NHS Employers Employment Standards

HMRC Employment Status assessment tool www.gov.uk [Check employment status for tax - GOV.UK](https://www.gov.uk/government/organisations/hm-revenue-and-customs)

10 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval	13 August 2024
Next review date	13 August 2027

This document replaces	HR-0033-v3(2)
This document was approved by	PWG
This document was approved	26 April 2024
This document was ratified by	Joint Consultative Committee
This document was ratified	13 August 2024
An equality analysis was completed on this policy on	07 October 2024
Document type	Public
FOI Clause (Private documents only)	N/A

Change record

Version	Date	Amendment details	Status
v4	13 Aug 2024	Full review with amendments <ul style="list-style-type: none"> • Change of framework information • IR35 information • Appendix 3 Changed • Medical Staffing request form added • Transferred onto new template 	Approved

Appendix 1 - Equality Analysis Screening Form

Please note: The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Section 1	Scope
Name of service area/directorate/department	People & Culture
Title	Temporary Agency and Self-employed Workers Procedure
Type	Procedure
Geographical area covered	Trust wide
Aims and objectives	Following this procedure will help the Trust to use approved agencies from the Workforce Alliance framework and remain compliant with the Agency Workers Regulations (AWR) 2011.
Start date of Equality Analysis Screening	16 May 2023
End date of Equality Analysis Screening	07 October 2024

Section 2	Impacts
Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?	Managers and Services
Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups?	<ul style="list-style-type: none"> • Race (including Gypsy and Traveller) NO • Disability (includes physical, learning, mental health, sensory and medical disabilities) NO • Sex (Men, women and gender neutral etc.) NO • Gender reassignment (Transgender and gender identity) NO • Sexual Orientation (Lesbian, Gay, Bisexual, Heterosexual, Pansexual and Asexual etc.) NO

	<ul style="list-style-type: none"> • Age (includes, young people, older people – people of all ages) NO • Religion or Belief (includes faith groups, atheism and philosophical beliefs) NO • Pregnancy and Maternity (includes pregnancy, women who are breastfeeding and women on maternity leave) NO • Marriage and Civil Partnership (includes opposite and same sex couples who are married or civil partners) NO • Veterans (includes serving armed forces personnel, reservists, veterans and their families) NO
Describe any negative impacts	None identified
Describe any positive impacts	By following this procedure it will ensure that the process does not negatively impact on the above characteristics.

Section 3	Research and involvement
What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)	HMRC Crown Commercial Services Agency worker Regulations 2011 Disclosure & Barring service
Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the protected groups?	Yes
If you answered Yes above, describe the engagement and involvement that has taken place	Liaised with Medical Staffing and finance to confirm their procedures and ensure this is reflected in the procedure.
If you answered No above, describe future plans that you may have to engage and involve people from different groups	NA

Section 4	Training needs
As part of this equality analysis have any training needs/service needs been identified?	No
Describe any training needs for Trust staff	NA
Describe any training needs for patients	NA
Describe any training needs for contractors or other outside agencies	NA

Check the information you have provided and ensure additional evidence can be provided if asked

Appendix 2 – Approval checklist

	Title of document being reviewed:	Yes / No / Not applicable	Comments
1.	Title		
	Is the title clear and unambiguous?	Yes	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	Rationale		
	Are reasons for development of the document stated?	Yes	
3.	Development Process		
	Are people involved in the development identified?	Yes	
	Has relevant expertise has been sought/used?	Yes	
	Is there evidence of consultation with stakeholders and users?	No	
	Have any related documents or documents that are impacted by this change been identified and updated?	N/A	
4.	Content		
	Is the objective of the document clear?	Yes	
	Is the target population clear and unambiguous?	Yes	
	Are the intended outcomes described?	Yes	
	Are the statements clear and unambiguous?	Yes	
5.	Evidence Base		
	Is the type of evidence to support the document identified explicitly?	Yes	
	Are key references cited?	Yes	
	Are supporting documents referenced?	Yes	
6.	Training		
	Have training needs been considered?	NA	
	Are training needs included in the document?	NA	
7.	Implementation and monitoring		
	Does the document identify how it will be implemented and monitored?	Yes	

	Title of document being reviewed:	Yes / No / Not applicable	Comments
8.	Equality analysis		
	Has an equality analysis been completed for the document?	Yes	
	Have Equality and Diversity reviewed and approved the equality analysis?	Yes	07 Oct 2024 SD
9.	Approval		
	Does the document identify which committee/group will approve it?	Yes	
10.	Publication		
	Has the policy been reviewed for harm?	Yes	
	Does the document identify whether it is private or public?	Yes	
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	NA	

Appendix 3 - Temporary Worker / Self Employed Workers Form

The Recruiting Manager must complete the below form and keep on file along with evidence of pre-employment checks.

Recruiting Manager Details	
Name:	Job Title:
Care Group:	Service:
Team Name:	
Location:	
Cost Centre:	AS Number:
Email:	Phone:

Vacancy Details:	
Position:	
Band:	Hours per week:
Start Date:	Duration:
Reporting to:	
Brief Description of Role:	

Candidate Details:	
Name:	DOB:
Band:	Hours per week:
Agency:	Framework:
Hourly Rate to Candidate:	Agency Charge Rate:
Start Date:	Duration:

Pre-employment Checks	
CV (with relevant employment history and experience)	
DBS type, Issue date and Number (Standard or Enhanced)	
Details of any convictions	
Registration Details (include Reg number) – if applicable	
Any Restrictions to Practice?	Yes / No

Date Website Checked:	
Assurance of Right to work in the UK (Please state documentation checked – i.e Passport / Visa)	
References – Covering the previous 2 year history	
Mandatory Training completed & date	Yes / No
Occupational Health confirmation:	

Self Employed Workers (specific)	
Agreed cost:	
HMRC Website checked:	Yes/No
Date of check:	
Outcome:	
Saved copy of HMRC Outcome in file	Yes/No
Insurance Certificates reviewed:	
Director Approval sought:	
Name of Director:	
Date of Approval:	

Form completed by:	
Print Name:	
Date:	

On completion of this form please email it to tevv.finance@nhs.net

Appendix 4 – Twelve Week Qualifying Period

GUIDANCE ON CALCULATING THE 12 WEEK QUALIFYING PERIOD

The right to equal treatment will not apply until an agency worker has worked in the same (or significantly similar) role for a hirer for twelve continuous weeks. However, this qualifying period is analogised as a clock which can be reset, paused or continue to “tick”.

There is no minimum amount of work that needs to be completed in order for a week to count as one of the twelve for qualification purposes.

The entitlements that are activated once the qualifying period has been met include:

- pay related to work undertaken on assignment
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- paid time off for ante-natal appointments
- Other payments include overtime (where qualifying hours have been completed) and annual pay award if relevant.

There are exclusions that are not covered under the regulations such as occupational sick pay from the hirer, occupational pensions (agency workers will be covered by new automatic pension enrolment which will be phased in from October 2012), occupational maternity, paternity or adoption pay, redundancy pay, notice pay, time off for trade union duties, expenses and the majority of benefits in kind.

Calculating the twelve week qualification

The twelve week qualifying period is triggered by working in the same job (or significantly similar) with the same hirer for twelve calendar weeks. Therefore, even if the agency worker is on assignment for only a few hours a week, it will still count as a week and they will still be entitled to equal treatment after twelve calendar weeks calculated in this way.

A new qualifying period will only begin if the new assignment with the same hirer is substantively different and/or there has been a minimum of six weeks break between assignments.

An agency worker can qualify for equal treatment after twelve weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency for part of that period of time.

The general rule under the Regulations is that any break between assignments of six weeks or less, in the same role, shall not break 'continuity' for qualification purposes.

The qualifying clock

The twelve week provisions can best be explained by thinking of the qualifying period as a clock which runs from zero to twelve. Sometimes a gap between assignments will mean that the clock is reset to zero and must start again. In other circumstances a break will merely 'pause' the clock which will then continue to tick when the agency worker returns. In some limited circumstances, the clock will continue to tick even if the agency worker is not working on an assignment.

There are reasons where the qualifying clock is reset to zero. Most commonly it will be because an agency worker begins a new assignment with a new hirer. Other instances are where an agency worker remains with the same hirer but is no longer in the same role, and if there is a break between assignments with the same hirer of six weeks or more (which is not one which 'pauses' the clock or during which it continues to 'tick').

Qualifying clock to "pause"

There are specific types of break which will cause the qualifying clock to "pause":

- A break for any reason where the break is no more than six calendar weeks
- A break of up to 28 weeks because the agency worker is incapable of work because of sickness or injury
- Any break which is for the purpose of taking leave to which the agency worker is entitled, including annual leave
- A break up to 28 calendar weeks to allow the agency worker to perform jury service
- A break caused by a regular and planned shutdown of the workplace by the hirer (for example at Christmas)
- A break caused by a strike, lock out or other industrial action at the hirer's establishment

Qualifying clock to continue to tick

There are breaks where the clock continues to tick. These are breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth; and any breaks due to the worker taking adoption or paternity leave.

Appendix 5 - Agency Request form - Medical Staffing

TEMPORARY AGENCY WORKERS REQUEST FORM

Recruiting Manager's Details	
Recruiting Manager: <input type="text"/>	Job Title: <input type="text"/>
Dept/Team: <input type="text"/>	Address: <input type="text"/>
Telephone: <input type="text"/>	Email: <input type="text"/>
Vacancy Details	
Position: <input type="text"/>	Base: <input type="text"/>
Reason for locum: <input type="text"/>	
Alternative options considered: <input type="text"/>	
Duties: <input type="text"/>	Experience required: <input type="text"/>
Line manager/Reporting to: <input type="text"/>	
Anticipated start date: Click here to enter a date.	Length of placement: <input type="text"/>
Hours per week: <input type="text"/>	Daily hours of work: <input type="text"/> to <input type="text"/>
Proposed job plan: <input type="text"/>	
Additional comments: <input type="text"/>	
<input type="checkbox"/> I confirm that I am authorised to provide this information for and on behalf of Tees, Esk and Wear Valleys NHS Foundation Trust Name: <input type="text"/>	Date: Click here to enter a date.

Please return to your medical staffing advisor