

Agency Workers Policy

Owned and maintained by:	Human Resources
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Scope

The aim of this policy is to provide clear information and procedures for the engagement and use of temporary agency workers. It should be read in conjunction with guidance provided on the Sharepoint intranet site (within Reference – Recruitment & Selection – Agency Recruitment). This policy is intended to:

- minimise agency costs and ensure value for money;
- improve monitoring, risk management and recording systems to ensure all agency workers are fit and proper for the role they are being asked to fulfil; and
- ensure Audit Scotland is compliant with employment legislation in this area.

For self-employed consultants, see Audit Scotland's separate guidance within the staff handbook. If you are unsure, please contact Human Resources for further advice.

Deciding whether to engage an agency worker

Using agency workers can represent a valuable resource option for managers seeking to procure **short-term** assistance during very busy periods or to cover for unplanned absences by Audit Scotland employees. There needs to be a justifiable reason for requesting an agency worker, for example:

- when there is a vacant post with budget availability and the work cannot be covered by existing staff;
- when service delivery is at risk or targets are compromised; or
- when there is an unexpected increase in the volume of work (e.g. due to unplanned absences).

Prior to deciding whether there is a need to engage an agency worker, managers should:

- review workforce plans and existing staffing workloads;
- consider whether the work can be reallocated/delayed; and/or
- re-assign work to other staff without compromising the provisions set out in The Working Time Regulations (1998) (as amended) or employee wellbeing.

Further alternative methods of filling staffing needs may include:

- secondment;
- re-working procedures to save time and staffing needs;
- utilisation of staff from other areas or business groups on a temporary basis;
- job sharing;
- fixed-term contracts - see Audit Scotland's policy on the use of fixed term contracts.

Audit Scotland does not encourage the use of agency workers for **long-term** periods since, in such circumstances, this resource option rarely represents value for money. Any assignment likely to continue beyond 12 weeks should be carefully considered because this represents the qualifying period after which agency workers are entitled to basic terms (including certain reward elements such as pay) comparable with Audit Scotland employees. HR generally advises managers not to use agency workers for assignments that might exceed 12 weeks unless there is objective business justification.

The Legal Position

The introduction of the Agency Workers Regulations (2010), which came into effect in October 2011, allows agency workers to receive certain rights from day one (primarily access to collective facilities, e.g. canteen and vacancy information). In addition, after a 12-week qualifying period, they are entitled to the same basic terms and conditions of employment as if they had been recruited directly. For a summary of the regulations see appendix 1.

Managers at Audit Scotland have an important role to play in order to ensure compliance. It is imperative that managers advise Human Resources in advance of using agency workers by following the procedure outlined in this policy. This will ensure we are taking appropriate steps to comply with legislation, particularly in relation to the 12-week equal treatment provisions and day one access to collective facilities.

Responsibilities

Directors, Audit Directors and managers are responsible for implementing and raising awareness of this policy and ensuring adherence to its requirements. They are also responsible for taking a business view of risk management and making a decision on agency workers' access to key information, systems and sensitive and/or confidential files, etc.

Line managers are responsible for the day to day management of agency workers and for following the principles and procedure outlined in this policy.

Authorisation for the engagement of agency workers

- Line managers across all business groups need authorisation prior to securing an agency worker. Approval processes in each business group vary and so the manager should speak to their Audit Director or Management Team member in the first instance.

- Due to the cost of employing agency workers, we have signed up to the Scottish Government Procurement Scotland Framework. The framework agreements for agency and interim staff realise the benefits of collaborative procurement. Procurement Scotland has worked with key stakeholders and suppliers to maximise financial benefit and deliver excellent service levels while providing robust contractual terms and conditions for all organisations that utilise the framework. More information on the framework and the preferred supplier list can be found on the agency recruitment page on the Sharepoint intranet site (agency guidance sheet, together with the preferred agency supplier lists for temporary workers, interim specialists, interim managers and interim specialists- the 'Direct Buy' and 'Micro Competition' frameworks respectively).
- Managers may approach other agencies if it would offer better value for money. However, Human Resources should be advised so that they can check quality standards are met.

Appointment Process

Managers who have appropriate authorisation to recruit a temporary agency worker should follow the process outlined below:

1. Read the guidance on the Sharepoint intranet site (within Reference – Recruitment & Selection – Agency Recruitment) before deciding which agency to approach.
2. Contact agencies to advise them of your requirements and agree a rate of pay¹. You are likely to need to provide a job description/person specification so that agencies can assess if agency workers are being paid equally to a comparable employee (if they are going to/likely to be on assignment for more than 12 weeks).
3. Liaise directly with the agency to sift CVs, arrange interviews and complete necessary 'fit & proper' checks, e.g. references, qualifications and the relevant Disclosure Scotland checks. Two people should carry out an interview and a record should be kept for feedback to the agency². Confirm to the agency which candidate you would like to engage. Managers should obtain appropriate local authorisation before confirming an assignment.
4. As soon as appointments are accepted, managers should contact Human Resources with the following details:
 - Full name
 - Job title
 - Manager
 - Agency name
 - Pay rate agreed

¹ Appropriate authorisation for the rate of pay should be sought before confirmation is provided to the agency e.g. in Audit Services Group, the Audit Director responsible for people will approve the rate of pay.

² Interview questions should focus on the requirements of the role and competencies required. In Audit Services, the conclusion of interviews should be fed back to the Audit Director responsible for people. If the individual has been assigned to Audit Scotland previously and is recommended by other line managers, a full interview may not be necessary.

- Start and end dates of assignment and, if known, details of any previous assignments with Audit Scotland.
- Office location
- Equipment requirements

Human Resources require this information at least one-week in advance of an agency worker starting in order to arrange appropriate IT set up. In addition, Human Resources need to be aware of any previous assignments with Audit Scotland because:

- Most agencies state within their terms of business that any worker introduced by them and who has left within the last six-months will still be bound to them. We are not able to take them on through a new agency.
- The Agency Workers Regulations (2010) states that if an agency worker leaves the organisation for a period of six weeks or less and returns, the 12-week qualifying period continues. For example, if an agency worker was assigned for four weeks, then left for three weeks and returned to the same or similar role, the first week back would be considered their fifth week (not their first). It should also be borne in mind that the six-week period can extend to circumstances in which an agency worker is on assignment but not working (for example, due to sickness absence or owing to pregnancy, childbirth or maternity). For further guidance and support, hiring managers should contact the Human Resources team. Therefore, it is important that we keep a track on previous assignments.

On-boarding Process

Managers responsible for agency workers should follow the process outlined below:

Induction

5. Carry out an induction using the induction checklist for agency workers (available on the Sharepoint intranet site in Reference – Recruitment & Selection – Agency Recruitment). All relevant paperwork should be returned to Human Resources.
 - It is essential that all agency staff receive an induction that is appropriate to their role and planned length of engagement and to ensure we are meeting our legal obligations i.e. day one access to collective facilities and vacancy information. This should include a general orientation, health and safety update, information about security /access to confidential information and introductions to relevant colleagues.
 - Managers must ensure agency workers have read and understood key Audit Scotland policies. For example, they must read and sign Audit Scotland's Code of Conduct and be given time to read other key policies e.g. Information Security Policy.
 - Ensure time sheets are provided by the agency worker. Managers are required to verify these before authorising payment to ensure hours have been worked as claimed.

Performance Management

6. Monitor performance on an on-going basis. This will require the manager to assess performance in line with our 3D system and to liaise with the agency. A full 3D should not be completed.
 - Line managers are expected to plan what functions are to be undertaken and monitor agency workers' performance. A review must be undertaken by the manager where an agency worker is engaged continuously in a single post for more than two months and a decision made on whether to continue engagement based on justifiable service need. Further reviews should occur at regular intervals.
 - Managers should raise concerns on performance with the relevant agency, especially where matters cannot be resolved or are of sufficient seriousness to potentially prevent future use. Managers have a responsibility and duty of care to ensure that concerns are raised and addressed where appropriate.
 - Please note that, if an agency worker is engaged for over 12 weeks and over an annual pay award cycle (1 April), they would be entitled to equal treatment with directly recruited employees in relation to pay. If you are planning on engaging an agency worker over the 1 April period, please speak to Human Resources in the first instance for guidance

Training

7. Agency workers are entitled to certain training if it falls under the scope of access to collective facilities. For example, training run in-house, on-site and accessible by other employees (i.e. Knowledge Cafés, technical training courses provided to staff, etc.) may be considered within the scope of collective facilities. Managers should speak to Human Resources for advice if required.

Monitoring and control – the key 12-week qualifying period

8. It is important that managers advise Human Resources in advance when they are planning to use agency workers. This will allow HR to monitor overall use of agency workers and track compliance with the Agency Workers legislation, particularly in relation to the 12-week equal treatment provision. Human Resources will check records to ascertain whether the individual has worked with Audit Scotland previously, as this could count towards the 12week equal treatment period.

Leaving Process

9. The leaving process must be appropriately managed by line managers
 - On leaving, managers should ensure they have advised Human Resources and managed the return of all Audit Scotland information and equipment, e.g. ID badge, Audit Scotland paperwork or IT equipment.

Appendix 1

The introduction of the Agency Workers Regulations (2010) in October 2011 allows agency workers to receive new rights from day one. In addition, after a 12-week qualifying period, they will be entitled to the same basic terms and conditions of employment as if they had been recruited directly. The 12-week period commences from 1 October 2011 or later (even for those on assignment prior to this).

Day 1 rights

All agency workers will be given the same access to the organisation's collective facilities and amenities as a comparable worker who is recruited directly. This access will be given from the first day of the agency worker's assignment with the organisation, for example:

- canteen/staff kitchen
- all toilet and shower facilities
- vending machines
- staff car parking
- Information on relevant job vacancies

After 12 weeks of an assignment

Audit Scotland is responsible for providing agencies with up to date information on basic terms and conditions to ensure they can pay workers equally (with a comparative employee) after 12 weeks' service.

In practice, as agencies are responsible for ensuring equal treatment, they are likely to ask Human Resources or managers for this information around week 9 of an assignment or when they are approaching the 12 week deadline³. If managers are approached, they should contact Human Resources to ensure we are providing accurate and consistent information in this respect. This includes pay:

- **Pay** - entitled to the same basic pay to which an employee or worker who has been directly recruited to the same job would be entitled (including pro rated salary and additional payments overtime pay/unsocial-hours allowance).
- **Annual leave** - entitled to the same paid annual leave to which an employee or worker who is recruited directly to the same job would be entitled on pro rated basis.
- **Working hours** - work the same basic working hours as an employee or worker who is recruited directly to the same job.
- **Rest periods** - entitled to the same rest periods and breaks to which an employee or worker who is recruited directly to the same job would be entitled.

Full guidance from the Department for Business Innovation and Skills (BIS) can be found on the Agency Recruitment page on the Sharepoint intranet site. If you have any questions on the Agency Workers Regulations or whether it applies to an agency worker you plan to engage, please contact Human Resources in advance.

³ Normally the agency will send a form to Audit Scotland for completion. The form asks for information including confirmation of pay details/ranges, holiday entitlements and any other reward elements that apply.