Reducing reliance on agency staff: consultation response

June 2019

NHS England and NHS Improvement

The NHS Long Term Plan says that when organisations work together they provide better care for the public. That is why on 1 April 2019 NHS Improvement and NHS England united as one – our aim, to provide leadership and support to the wider NHS. Nationally, regionally and locally, we champion frontline staff who provide a world-class service and constantly work to improve the care given to the people of England.

Contents

1. Introduction

1. This document summarises responses to our consultation on extending the agency rules and the changes we will make as a result. The updated agency rules are published here[1] and will come into effect from **16 September 2019**. We will work closely with providers to help implement these changes.

2. We introduced the agency rules in April 2016 to support trusts to reduce their agency expenditure and move towards a more sustainable level of temporary staffing. Since then, trusts have successfully reduced agency spend by over £1 billion. It has fallen from 8.2% of total the pay bill at its peak to just 4.4%.

3. However, since the start of 2018/19, the volume of agency shifts has increased, largely due to increased activity. Despite a drop in agency prices, these conditions have created a challenging environment for trusts.

4. Therefore, we consulted on two proposals to move non-clinical (and clinical unregistered) agency spend on framework and ultimately move it onto bank and substantive contracts. For trusts, this will reduce cost and give greater assurance of quality. It will enable non-clinical (and clinical unregistered) workers who play vital roles across a range of fields to benefit from a better flexible bank offer and increase the number benefiting from substantive roles in the NHS. As set out in the Interim NHS People Plan,[2] making the NHS a flexible employer of excellence is a key priority for all trusts, sustainability and transformation partnerships and central bodies.

5. During the six-week consultation we sought views on how these proposals would affect trusts and staff and how they could be best implemented. We received 141 responses from a range of stakeholders and thank all of them for their insightful feedback.

6. Among respondents, **73%** agreed with the proposal to restrict the use of off-framework agency workers; **58%** of respondents agreed with the proposal to

[1] https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/
[2] https://improvement.nhs.uk/resources/interim-nhs-people-plan/

restrict the use of admin and estates agency workers, with a further 11% agreeing with the proposal subject to some modifications.

7. Following the integration of NHS Improvement and NHS England, we are now applying the principles set out in the agency rules to our own organisation, this will include enhancing our flexible deployment and resourcing arrangements.

2. Summary of proposals

8. We ran the consultation from 8 February 2019 until 22 March 2019 on two proposals:[3]

   - Proposal 1: a restriction on the use of off-framework agency workers to fill non-clinical and unregistered clinical shifts
   - Proposal 2: a restriction on the use of admin and estates agency workers, with exemptions for special projects and shortage specialties

Summary of Proposal 1: restrict the use of non-clinical and clinical unregistered off-framework agency workers

9. Off-framework agency spend has reduced significantly since the introduction of the agency rules, now costing between £120 million to £150 million a year. Off-framework shifts tend to cost more and are less quality assured than on-framework shifts.

10. Under the proposal, all NHS trusts, NHS foundation trusts receiving interim support from the Department of Health and Social Care and NHS foundation trusts in breach of their licence for financial reasons[4] would be required to use on-framework agency workers for non-clinical and unregistered shifts. This would include admin and estates, healthcare assistant (HCA) roles and some allied health professionals (AHPs). It would not include medical, registered nursing and midwifery, scientific and technical, healthcare science and registered AHP roles.[5] Currently non-clinical and unregistered off-

[3] For details of this consultation, including the consultation documentation and current agency rules, see: https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/

[4] Throughout this document, 'trusts' refers to the trusts noted in paragraph 10 unless otherwise specified.

[5] Where a role requires a clinical worker who is fully qualified and registered by a professional organisation, we would consider that to be a 'registered' clinical shift and it would be exempt from the restriction. The Faculty of Physician Associates strongly encourages physician associates to join the Physicians Associate Managed Voluntary Register, and for the purpose of the agency rules they are therefore classified as registered. These roles are exempt from the restrictions. Where a role is directly involved in patient care, it is considered 'clinical' and therefore exempt unless the role is unregistered.

framework shifts cost trusts about £7 million a year, approximately 5% of total off-framework spend.[6]

11. Nearly 80% of trusts currently do not use any off-framework agency workers for non-clinical or unregistered clinical shifts and would be expected to continue to procure in this way.[7] We proposed to work with those trusts that do use off-framework agency workers for non-clinical and unregistered clinical roles, to support them to shift the spend on-framework or onto bank or substantive contracts by April 2020.

12. This restriction is part of a strategy to help gradually eliminate all off-framework use over several years. Trusts should look to shift off-framework agency usage across all staff groups on-framework or onto bank or substantive contracts as a priority to gain greater assurance on quality and bring down agency spend.

Summary of Proposal 2: restrict admin and estates agency use

13. Admin and estates accounted for 9% of agency spend (£211 million) in 2018/19. Some trusts have significantly reduced their admin and estates agency spend in recent years, with 74 trusts reporting they had more than halved it in 2017/18 and 46 trusts more than halving spend in 2018/19. However, there is still significant variation between trusts: admin and estates agency spend ranged from 0% of their total admin and estates pay bill to 14.5%.

14. Under the proposal, trusts would be required to use bank or substantive (including fixed-term) contracts to fill admin and estates shifts. By making greater use of bank and substantive options, trusts can bring down cost and build a better flexible working offer for their non-clinical staff. There would, however, be some exceptions where interim agency support may be required:

    a. During **short-term special projects** such as IT transformation, mergers, transactions and other critical service change, we recognise the need for interim support. Agency workers can therefore help staff these projects,

[6] This figure is based on trusts' reported spend from December 2017 to December 2018.
[7] Fifty trusts used some non-clinical or clinical unregistered off-framework agency workers between April 2018 and March 2019.

but trusts would need to inform NHS Improvement/NHS England, including when the project ends and the workers will leave or move onto bank/substantive contracts. These projects should wherever possible be incorporated into annual planning. We proposed that a 'short-term project' be defined as lasting no more than six months.

b. **Shortage specialties**: Clinical coding is a specialist skill in high demand but short supply, and these shifts would therefore be exempt from any restrictions.

c. **Interim very senior managers** (VSMs) will continue to be covered by the separate rules that can be found on our website,[8] and any future updates to these rules will be communicated to trusts.

[8] *Interim agency very senior manager approval process*: https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/

3. Consultation feedback and response

Overview

15. We received 141 responses to the consultation. Over two-thirds of responses were from NHS trusts, but also from key stakeholders and membership organisations including NHS Providers, the Recruitment and Employment Confederation and NHS Employers. There was a representative spread across sectors, regions and job roles.

16. We thank everyone who responded. We considered their feedback in depth when making final amendments to the agency rules.

Figure 1: Consultation responses by respondent

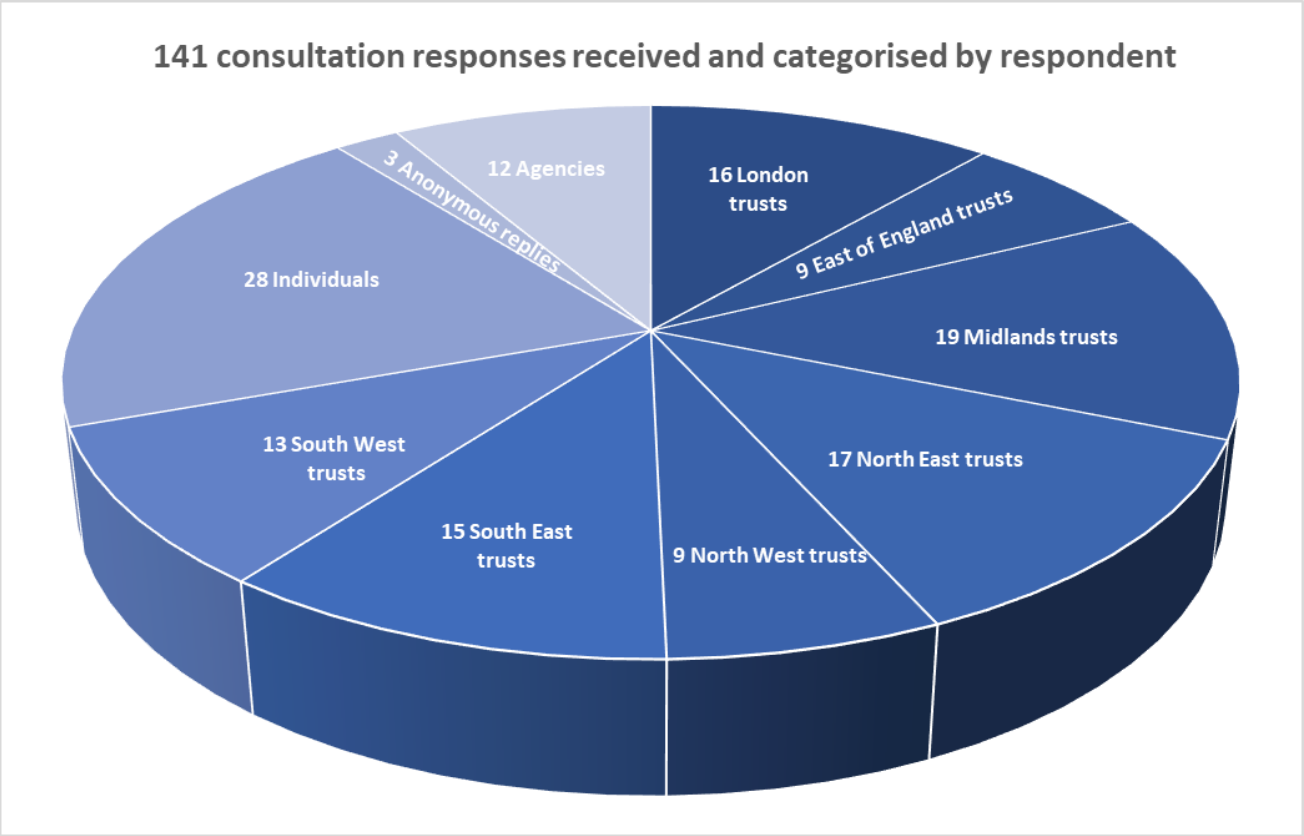

Table 1: Respondents' roles and specialisms[9]

Respondents by role type	%
HR/OD	22
Resourcing (including temporary staffing)	16
Workforce	16
Finance	14
Procurement	5
Clinical	3
IT	3
Membership organisations	2
Estates	1
Other (including trust specific roles)	20

Proposal 1: Restricting the use of off-framework agency workers

17. Restricting the use of off-framework agency workers for non-clinical and unregistered clinical shifts was supported by **73%** of respondents; **83%** of trusts that responded were in favour. Respondents agreed it was more cost-effective for trusts to use on-framework agencies and that doing so would offer better care for patients. Of trusts that responded, 59% had already introduced similar measures.

> "We support the proposal to restrict off-framework agency workers for non-clinical and unregistered roles. This is considered a reasonable approach and consistent with the current attitude towards the use of off-framework agencies."
>
> *East Suffolk and North Essex NHS Foundation Trust*

[9] In many cases, the response was on behalf of a range of directorates within a trust.

> "The employers that we spoke to agreed with this proposal, with many of them commenting that they already ensure they use framework approved agency workers for non-clinical and unregistered clinical shifts."
>
> *NHS Employers*

18. There were, however, some concerns and areas for clarification.

> You said:
>
> We are concerned that this could affect patient safety and operational delivery:
>
> - Will trusts be able to 'break glass' and go off framework where there is an exceptional patient safety reason for doing so?
> - Some specialist roles are not on any approved framework in certain localities – in particular, specialist IT and estates roles.

> "Yes, I do [support the proposal] provided it is a restriction and not a complete ban as patient safety must always come first and we do occasionally have needs for additional HCAs for enhanced supervision to prevent falls. We would always use bank in the first instance and haven't used any agency for a number of months now for HCA roles, but would not want the option removed altogether."
>
> *Nottingham University Hospitals NHS Trust*

19. We agree with the feedback on the paramount importance of maintaining patient safety and wish to make clear that **the existing 'break-glass' clause will remain in place for non-clinical and clinical unregistered roles** as it does for other staff groups. This means a trust can use an off-framework

agency worker where it believes there is an exceptional risk to patient safety and where there is no on-framework, bank or substantive alternative.[10]

20. We also recognise that more needs to be done to expand on-framework supply to include specialist roles in all localities. **We will therefore be working closely with the approved framework operators, trusts and agencies to encourage agencies and workers to join approved frameworks.**

21. While most trusts did not feel they needed support to implement the proposal, those with non-clinical and clinical unregistered off-framework spend did require greater support. **We are working with trusts that use off-framework agencies for these staff groups and with local approved framework operators to help move these workers into approved agencies.**

22. Some trusts asked us to clarify how this proposal differs from the existing agency rules requiring trusts to procure agency workers through on-framework agencies. **While this restriction on off-framework use did exist previously, we will monitor and enforce the rule for non-clinical and unregistered staff more closely, and we will provide more targeted support to trusts affected.**

Implementation

23. There was limited feedback on implementation, but those trusts affected sought a period of transition during which they could reduce off-framework spend. We are therefore giving all trusts three months in which to implement this.

24. The timeframes will therefore be:

- For trusts without non-clinical or clinical unregistered off-framework spend, we will enforce the restriction with immediate effect.

[10] NHS Improvement publishes a list of approved framework agencies https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/#frameworks

- For trusts with some non-clinical or clinical unregistered off-framework spend, we expect them to eliminate this spend by September 2019, though bespoke timeframes may be agreed on a case-by-case basis. Trusts affected have already been notified and offered support.

25. Where a trust has off-framework admin and estates agency spend that it successfully moves to an on-framework agency, we will give the trust time then to move that spend away from agency altogether (as required under Proposal 2). We will discuss these timeframes with trusts on a case-by-case basis.

Proposal 2: Restrict the use of admin and estates agency workers

26. Among respondents, **58%** agreed with introducing restrictions on using admin and estates agency workers and a further **11%** supported the proposal with some additional exemptions.

27. The feedback had six key themes:

- patient safety
- exemptions
- alternatives to non-clinical agency
- IT
- implementation
- support.

Patient safety

> You said:
>
> We are concerned that the measures will stop us filling certain roles, particularly in estates and facilities, which directly affect patient care and patient safety including:
>
> - cleaners and housekeepers
> - core building trades
> - porters
> - security.
>
> Many trusts must currently turn to agencies for these workers because of the lack of well-developed non-clinical banks, the difficulties of recruiting these workers onto bank and the time it can take to recruit to a full-time post.

28. We agree with the concerns raised and therefore **will keep the 'break-glass' clause for admin and estates agency shifts. This means that where there is an exceptional patient safety risk, a trust will be able to use an agency worker**. The break-glass clause will continue to operate as it does currently, with trusts reporting the details of these shifts after they have been worked. Trusts can decide when to break glass; however, we anticipate its use where there is a **direct** impact on patient care – for example, in certain estates and facilities roles.

29. Wherever possible, trusts should have call-off contracts for key emergency jobs, such as emergency repairs or specialist infection control, which will be needed urgently and sporadically. Workers on these contracts would not be classified as agency spend and therefore would be beyond scope of these rules. Where trusts engage these workers through subsidiary companies, the spend will be outside the scope of these rules. However, we expect trusts to ensure they comply with HMRC guidance and the Agency Worker Regulations and can demonstrate the value for money of these arrangements.

Exemptions

30. Respondents raised specific queries and concerns about the proposed exemptions.

> You said:
>
> We support the exemption but need clearer definitions of a 'special project' and 'shortage specialty':
>
> - Would special projects cover responses to exceptional events? For example, the General Data Protection Regulation (GDPR), cyber security attacks, or safety checks in the wake of the Grenfell inquiry?
> - The suggested timeframe of three to six months for a special project is too short to cover all IT projects and capital projects.
> - Is it for trusts to define shortage specialty or will a list be set nationally?
> - Will the list of shortage specialties be fixed or subject to review?

31. We have included in the updated agency rules a more detailed definition of the special projects exemption (summarised in the Appendix). However, we intend to keep the definition broad rather than prescriptive to give trusts the flexibility to use the exemption as they see fit locally. Following the consultation feedback, **the definition of special projects will cover responses to exceptional events** such as a cyber security attack**.**

32. Trusts should notify NHS Improvement/NHS England when they plan to undertake a 'special project' using admin and estates agency workers. We will expect them to provide details of the project's length, its objective, and the cost of agency usage on the form provided.[11] In the light of the feedback received, **three to six months will be a suggested timeframe rather than mandatory**. Beyond six months, trusts should notify their NHS Improvement/NHS England regional team about an extension.

[11] https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/

33. For clarification, we would consider staff attached to capital schemes to be exempt from these rules, even where the pay bill costs have not been capitalised in accounting terms.[12]

34. The list of roles classed as 'exemption specialties' (previously referred to as shortage specialties) is set nationally by NHS Improvement but will be reviewed regularly to ensure it is fit for purpose based on substantive and temporary staffing data. Based on current evidence and feedback, **clinical coding is currently the only 'exempt specialty'**.

35. While interim VSMs are not within the scope of these rules and are covered by a separate policy,[13] **we are increasing emphasis on the value for money of VSMs' daily rate as part of the approval process** to ensure that scrutiny is applied to admin and estates agency spend at all levels**.** Further information on this change will follow in due course.

Alternatives to non-clinical agency

36. Trusts and other respondents were concerned the restrictions could stop trusts filling certain roles and shifts/assignments:

> You said:
>
> We are concerned that the measures will stop us filling certain roles, including senior HR and finance roles, and that this would have an operational impact.
>
> You felt it would be challenging to find alternatives because:
>
> - there is a lack of well-developed non-clinical banks
> - rates of pay under Agenda for Change, particularly for senior administrative and specialist estates roles, often cannot match private sector alternatives
> - workers wanted the flexibility that agencies offer and had to date not been attracted onto permanent, fixed term or bank contracts.

[12] Capitalised spend is exempt from all the agency rules.
[13] https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/#vsm

37. We recognise that a significant shift away from using admin and estates agency workers will require support and time to transition. There is more to do to build up non-clinical banks, particularly for roles above Band 4, to enable them to attract more workers and offer a better service for employers. Trusts will need more creative and innovative employment options, such as greater use of temporary-to-permanent contracts, fixed-term contracts and collaboration across local health systems to share workers.

38. **We are therefore extending the lead time for implementing these measures to three months to give trusts time to make the transition.** For more detail, see paragraph 48 below.

39. **We are also establishing a significant programme of support for trusts,** described in more detail in paragraph 45 below.

> "Our proven experience is that with sufficient lead time, it is possible to recruit to all roles. Success is dependent on working to best practice and the booking behaviours of hiring managers. Training and further development may make improvements here. A restriction on the use of agency would result in an increase in bank fill as this would become the only route for candidates to work in the NHS."
>
> *NHS Professionals*

40. Respondents supported the principle that bank continues to be better value than agency on average for admin and estates staff, as well as offering better quality over the longer term. In some instances, agency can be the cheapest option at entry level if the worker's wages were equal and the worker chose to opt into the NHS pension; however, this was felt to be the exception. We would expect trusts therefore to consider the value for money of using different employment routes and decide accordingly. Respondents felt it was important to consider the wider costs of bank as well as the pay to the worker and on-costs, such as recruitment, training and bank team overheads.

Information technology

41. Over a third of responses raised the ability to attract IT workers away from agency and into bank or substantive roles as a particular concern. Trusts find it difficult to recruit to substantive IT roles when workers are often able to choose more competitively paid private sector roles instead. Some respondents therefore felt the proposal would stop trusts filling roles such as service desk analysts, business intelligence analysts, software developers and IT programme managers where they were not attached to a 'special project'.

42. We recognise that all IT roles, not just those attached to special projects, play their part in delivering the digital transformation agenda in the NHS Long Term Plan and the Interim People Plan and that currently these workers are very difficult to attract onto substantive and bank contracts. **For now, we will exempt IT roles from the restriction on admin and estates agency use. However, we expect trusts to scrutinise all admin and estates agency spend, including IT, and look to secure staff substantively wherever possible. All exemptions will be kept under review.**

43. It is important, as stated in the Interim People Plan, that we develop and retain staff with IT and digital skills in the NHS to create a more sustainable and technologically enabled workforce. The support described in paragraph 45 below will therefore include identifying and sharing learning on best practice recruitment and retention for IT staff as well as identifying how we can make better use of fixed-term contracts and banks.

Support

44. Trusts gave insightful feedback around additional support to help implement the proposal.

You said:

To implement the proposals, we need:

- support and advice on how to recruit and retain staff in hard-to-recruit roles that are difficult to attract to bank.
- advice on admin and clerical recruitment to the bank for short-term placements while substantive recruitment is underway.
- appropriate lead time to implementation to enable banks to be built up
- best practice information to be shared regionally or nationally.

45. We will support trusts to implement this proposal. This will include:

- **intensive support** to those trusts most affected; these trusts' HR directors will have received an email during the week of 20 May
- we will build an **online improvement hub** to share what works, where we will upload improvement tools and case studies covering best practice recruitment, retention, bank and flexible working arrangements for admin and estates staff
- **peer learning event(s)** in Quarter 2 of 2019/20 to allow trusts to share best practice and problem-solve common challenges.

46. This support will evolve as we work with trusts and develop solutions. However, all trusts should contact NHSI.agencyrules@nhs.net if they have queries or areas where they would like support.

Implementation

47. Feedback strongly suggested that the proposed timeframes were unfeasible, with only 22% of respondents feeling able to implement the new rules in the originally proposed April start date:

> You said:
>
> An immediate start date is unrealistic because:
>
> - where a worker is being transferred from an agency contract to an alternative contract or being terminated, trusts are required to give agencies four to eight weeks' notice under the framework agreements
> - trusts need time to begin to build up non-clinical bank capacity.

48. We agree with the feedback and are therefore **extending the implementation period to three months from the publication of a change to the agency rules**. The changes will therefore go live on 16 September 2019. During this period, we will work to support trusts to implement the changes and build bank capacity.

49. Where a trust has live ongoing assignments for admin and estates agency workers, it will be able to transition the workers during the three-month implementation period. If the assignment is longer than the three-month implementation period, we expect the assignment to be renegotiated to take account of the changes to the agency rules.

Summary of changes and clarifications to proposals resulting from the consultation

Proposal 1 – non-clinical and clinical unregistered off-framework

1. Clarification: trusts can still use the break-glass clause and use non-clinical and clinical unregistered off-framework agency workers where there is an exceptional patient safety reason for doing so. We will monitor these overrides closely.

2. Change: an implementation period of three months for trusts to eliminate non-clinical or clinical unregistered off-framework spend by September 2019.

Proposal 2 – admin and estates agency workers

1. Change: we are extending the implementation period to three months to allow trusts time to transition agency workers onto bank/fixed-term/ substantive posts and to build up their banks.

2. Change: we will allow trusts to use the break-glass clause and use admin and estates agency workers where there is an exceptional and direct risk to patient safety.

3. Change: staff who are working on a highly important project in response to an unexpected event – eg a cyber security attack – will be exempt under the 'special projects' exemption alongside those working on planned projects such as service change programmes.

4. Change: we are increasing scrutiny of the value for money of the daily rates agreed with interim very senior managers, covered separately.

5. Change: for now, we will exempt all IT staff from the restriction on the use of agency workers. However, we expect trusts to strengthen efforts to increase value for money from their IT staffing arrangements.

We will keep all exemptions under review.

Summary of implementation timescales

Proposal 1 – Off-framework

- For trusts **without** non-clinical or clinical unregistered off-framework agency spend, the restriction takes effect as of September 2019.

- For trusts **with** non-clinical or clinical unregistered off-framework agency spend, we will help them manage the transition of workers to a compliant agency by September 2019 and then onto bank or substantive contract. We do not expect trusts to be able to immediately move workers from off-framework agencies straight onto bank or substantive contracts.

Proposal 2 – Admin and estates

- From the publication of this document, trusts have a three-month implementation period to transfer agency workers and build up bank capacity. The restriction on admin and estates agency use will therefore go live on 16 September 2019.

- Any assignments which extend beyond 16 September will need to be renegotiated.

Appendix: Changes to *Agency rules*

4.1 After carefully considering the consultation responses, NHS Improvement will introduce the following changes to *Agency rules* with effect from 16 September 2019.

Change to Chapter 6 – mandatory use of approved framework agreements

6.1. Under the proposal, the following are required to procure all agency staff (nurses, doctors, other clinical and non-clinical staff) via framework agreements we have approved:

- all NHS trusts
- NHS foundation trusts receiving interim support from the Department of Health and Social Care
- NHS foundation trusts in breach of their licence for financial reasons.

Other NHS foundation trusts and NHS foundation trusts in receipt of financial recovery funding are encouraged to apply the agency rules.

6.2 Overrides to this rule are permitted on exceptional patient safety grounds only.

6.3 Throughout this document, 'trusts' refers to the trusts noted above unless otherwise specified.

6.4 **NEW:** From June 2019, we will closely scrutinise compliance with the requirement to procure agency staff through an approved framework for non-clinical and clinical unregistered staff. This includes admin and estates staff, healthcare assistant (HCA) roles and some allied health professionals (AHPs). It does not include medical, registered nursing and midwifery, scientific and technical, healthcare science and registered AHP roles.[14] We expect all trusts to have

[14] Where a role requires a clinical worker who is fully qualified and registered by a professional organisation, we would consider that to be a 'registered' clinical shift and it would be exempt from the restriction. The Faculty of Physician Associates strongly encourages physician associates to join the Physicians Associate Managed Voluntary Register, and for the purpose of the agency rules they are therefore classified as registered. These roles are exempt from any restriction.

eliminated the use of off-framework agency workers for non-clinical and clinical unregistered roles by September 2019. Trusts will still be able to 'break glass' and procure off-framework if there is an exceptional risk to patient safety.

6.5. A list of approved framework agreements can be found on our website. We will continue to review framework applications as they are submitted. We will continue to communicate outcomes to framework operators and trusts, including any updates to the list of approved framework agreements.

6.6. Framework agreements that do not meet the conditions in the framework approvals guidance will have their approved status reconsidered by NHS Improvement and risk having that status removed. If approval is removed, we will notify trusts that they can no longer use that framework agreement and allow trusts a reasonable period, at our discretion, to move to approved framework agreements.

6.7. All procurement from approved framework agreements must comply with the price caps and maximum wage rates. We have worked with framework operators to ensure that all approved framework agreements contractually embed the price caps.

6.8. It is the responsibility of framework operators, not trusts, to seek our approval for their framework arrangements.

6.9. We have published guidance[15] on how framework operators can apply for their framework agreements to be approved by us. Framework operators can apply using the application form on our website. We will continue to review applications as we receive them.

6.10. Where contractual arrangements with agencies already exist, trusts are expected to renegotiate or terminate those arrangements where appropriate and as far as legally possible, taking into account any contractual requirements for notice and/or exit fees.

[15] https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/#frameworks

NEW Chapter 7 – Use of admin and estates agency workers

7.1 From 16 September 2019 trusts are required to use only bank or substantive workers to fill admin and estates shifts/assignments. Trusts should only use agency workers to fill these shifts where they meet one or more of the following criteria. These exemptions are set nationally by NHS Improvement and will be subject to review.

Special projects

7.2 During special projects such as mergers and transactions, digital transformation, RTT, and other critical service change, we recognise the need for interim support. Agency workers can therefore help staff these projects. We expect these to be short to medium-term projects of high importance to the trust, requiring resource and specialist skills the trust does not have. We expect the trust to make every effort to use existing or newly recruited bank or substantive staff before turning to agency workers. The trust must use its discretion to decide whether a project meets these criteria.

7.3 Before the start date, we expect the trust to inform us of the project including when it will end, and when the workers will leave or move onto bank/substantive contracts. Where a project is longer than six months, the trust must update us on progress and the remaining duration/cost. In this instance the trust is informing us and not requesting approval, though we will challenge excessive or prolonged agency use.

7.4 In some cases we recognise that the need for these special projects will arise last minute and urgently in response to events – for example, a cyber security attack. Trusts would be able to use agency workers to support these last-minute or responsive projects, where bank or substantive workers are not available. In these exceptional cases trusts can inform us of the project after it has begun.

Exempt specialties

7.5 Clinical coding is a specialist skill in high demand but short supply, and these shifts will therefore be exempt from any restrictions. While clinical coding is currently the only admin and estates exempt specialty, the list of 'exempt specialties' will be kept under review nationally by NHS Improvement.

Patient safety

7.6 Trusts can 'break glass' and procure an agency worker for an admin and estates shift where there is an exceptional patient safety risk. These shifts are reported to us and are reviewed by central and regional teams. See chapter X for further details on the process and expectations.

IT roles

7.7 Trusts can use agency workers to fill IT roles as a last resort where there is no bank, fixed term or substantive alternative available.

Interim very senior managers

7.8 Interim VSMs will continue to be covered by the separate rules.[16]

[16] https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/#vsm

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