

Temporary Staffing Policy & Procedure

Author(s)	Tim Widdowson – SECUS HR Business Partner
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1.0 Introduction

The expansion in the temporary and agency market has attracted the attention of Her Majesty's Revenue and Customs (HMRC). Regulations have been tightened and are being enforced to ensure that correct accounting for any tax and national insurance implications are in place. **Non-compliance places the CCG at risk of substantial fines.**

This policy has been developed to assist managers to ensure that good practice is adopted when considering and engaging temporary staff and that all appropriate and necessary checks are completed. Temporary staffing arrangements can also be costly when compared to having permanent staff in post.

Temporary staffing should not be viewed as a long term solution. If you have or are considering interim/temporary staff in roles that are likely to extend beyond 12 months these should be considered for fixed term or permanent recruitment. Please get in touch with your HR Business Partner for further advice.

When using temporary staffing agencies Standing Financial Instructions (SFIs) are to be complied with and quotations should be sought from at least 3 different agencies. Agencies have different specialisms and the most appropriate agencies should be approached when requesting quotes.

Exceptionally, prior approval may be granted by the CFO and CO to source interim cover outside of the approved framework suppliers. In such instances, recruiting managers should still comply with the procedures within this policy.

Where partnership arrangements are in place for jointly funded posts (e.g. Council, CSU, CCGs and other NHS organisations) lead Directors must come to a consensus as to which organisation's policy will be followed to recruit staff on an interim or temporary basis as well as which organisation should hold the contract. Where the contract is to be held by the CCG, this policy must be followed.

A flow chart of the interim recruitment process is highlighted at appendix 1 and the tax implications for each type of engagement at appendix 2.

2.0 Terms of agency engagement

Prior to approaching agencies, managers should establish the requirement for interim support and have director approval to proceed. An authorisation form (appendix 3) must be completed for approval and audit purposes. The request should be signed by the recruiting manager and then approved by the directorate lead and Chief Finance Officer. If the assignment is expected to be for more than 6 months, an additional level of approval is required (appendix 4) This additional approval (appendix 4) is also required if a current

interim contract is to be extended and would take the total period for the contract beyond 6 months

Only framework approved agencies should be contacted for quotations. Framework approved agencies have agreed to adopt contract terms that are acceptable to NHS organisations. Non-framework agencies are likely to charge higher commissions with less favourable contractual terms.

When contacting agencies role requirements should be outlined to include:

- Role details - description or role specification;
- Banding - Agenda for Change band for the post/role;
- Budget/Daily Rate available - indicate the expected hire;
- Period to be covered – length of assignment;.

A list of approved suppliers for interim and temporary staff included on the NonMedical Non-Clinical (NMNC) framework can be found at the below link: <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm971>

In addition, a selection of agencies currently used, their specialisms and contact details are shown at appendix 5.

If the individual is to be engaged directly through their own limited company or personal service company, (i.e. not through an agency), prior approval from the CO and CFO is required.

3.0 Selection and appointment of temporary staff

The agencies selected will contact you with their applicants' CVs. Assess the applicants and carry out a standard shortlisting process in line with the essential requirements for the role. Arrange interviews.

Once you have appointed to the post advise Finance and the HR Business Partner of the details.

4.0 Contractual Documentation

The agency will send you the contract paperwork directly. This should be scrutinised, agreed and signed off by the relevant recruiting manager. The agency is the engager of the named individual/contractor; they will withhold PAYE and NIC in respect of all payments it makes to the contractor. Ensure this is included in the contract.

5.0 Timesheets and payment to the agency

The budget holder should be the signatory to confirm the contractors' hours. Most agencies operate an electronic timesheet system with a username/password login set up.

6.0 Induction and Training

Interim staff should receive a local induction as soon as possible after starting their role (see CCG local induction guidance and checklist for further details). Interim staff will be required to undertake some mandatory training (Information Governance, Safeguarding (Adults and Children), Equality and Diversity, Fire Safety)

7.0 Agency Worker Regulations 2010 (AWR)

The Agency Worker Regulations 2010 apply to CCG interim staffing posts. The regulations ensure the fair treatment of agency and temporary workers with respect to pay and terms and conditions of service. You may receive an AWR compliance questionnaire from the agency requesting information regarding the temporary worker and their terms and conditions. Full information about AWR can be found below:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32121/11-949-agency-workers-regulations-guidance.pdf

8.0 Tax/NI Compliance

The CCG is obligated to investigate and seek IR35 assurance of interim and temporary staff contracts. (Essentially, IR35 affects all contractors who do not meet HMRC's definition of 'self employment').

In addition, the CCG is required to implement the recommendations made by HM Treasury with reference to tax arrangements for public sector appointees and the detailed guidance issued by the Department of Health in August 2012. This requirement is aimed at ensuring the correct tax and National Insurance Contributions are properly accounted for should the CCG engage an interim through an intermediary e.g. a Personal Service Company (PSC).

Where managers, on behalf of the CCG, subject to all the authorisation requirements set out within this policy, enter into engagements of more than 6 months in duration directly with any consultant or contractor, for more than a daily rate of £220, a contractual agreement should be drafted.

The contractual agreement will allow the CCG to seek assurance regarding the tax and NI obligations of the consultant/contractor – and allow the termination of the contract if that assurance is not provided. Model Contractual clauses enclosed at Appendix 6 should be incorporated into all such non-agency contracts to facilitate this. However, where a contractor is recruited through an agency, appendix 7 will be appropriate.

To give an appropriate level of assurance that all regulations are being followed, the CCG will need to establish the employment status of the contractor and obtain any necessary evidence.

As the recruiting manager you will be responsible for carrying out the actions below in order to seek assurance in the following circumstances:–

- CCG contracts directly with interim/temporary contractor (i.e. not via an agency).

A. Where the individual is engaged directly by the CCG

Prior to engagement the manager will:

- Need to establish the status of the contractor as either employed or self-employed by using HMRC's online Employment Status Indicator tool at <https://www.gov.uk/employment-status-indicator>
- If the outcome of the online enquiry suggests that the contractor is an employee, they should be issued with a fixed term contract for the relevant period (with PAYE and NIC accounted for at source), contact HR to arrange.
- If the outcome of the online enquiry suggests that the contractor may be considered as self-employed, a contract for services should be issued to the individual (contact HR Advisor for details).

During the engagement:

- The contractor should raise invoices and payments should be made to the contractor accordingly.
- Managers will be expected to review and monitor the engagement ensuring that all changes to service delivery outside of the initial agreement are handled appropriately.

Note: Where the payments to contractors/ consultants exceed £220 per day and are for greater than 6 months, the CCG is required to report this information to DoH in respect of the relevant Financial Year.

Appendix 2 provides detailed guidance.

B. Where the individual is engaged indirectly through their own Limited Company or Personal Service Company

To ensure that the individual is complying with IR35 legislation and therefore paying tax and national insurance and in accordance with current Treasury requirements, the CCG will need to:-

- seek assurance from the contractor that they have considered IR35
- CCG contracts directly with agency (i.e. not with individual or via their company)

Individuals engaged indirectly via an agency may provide their services to the agency either personally (as agency workers or self-employed contractors) or via a personal

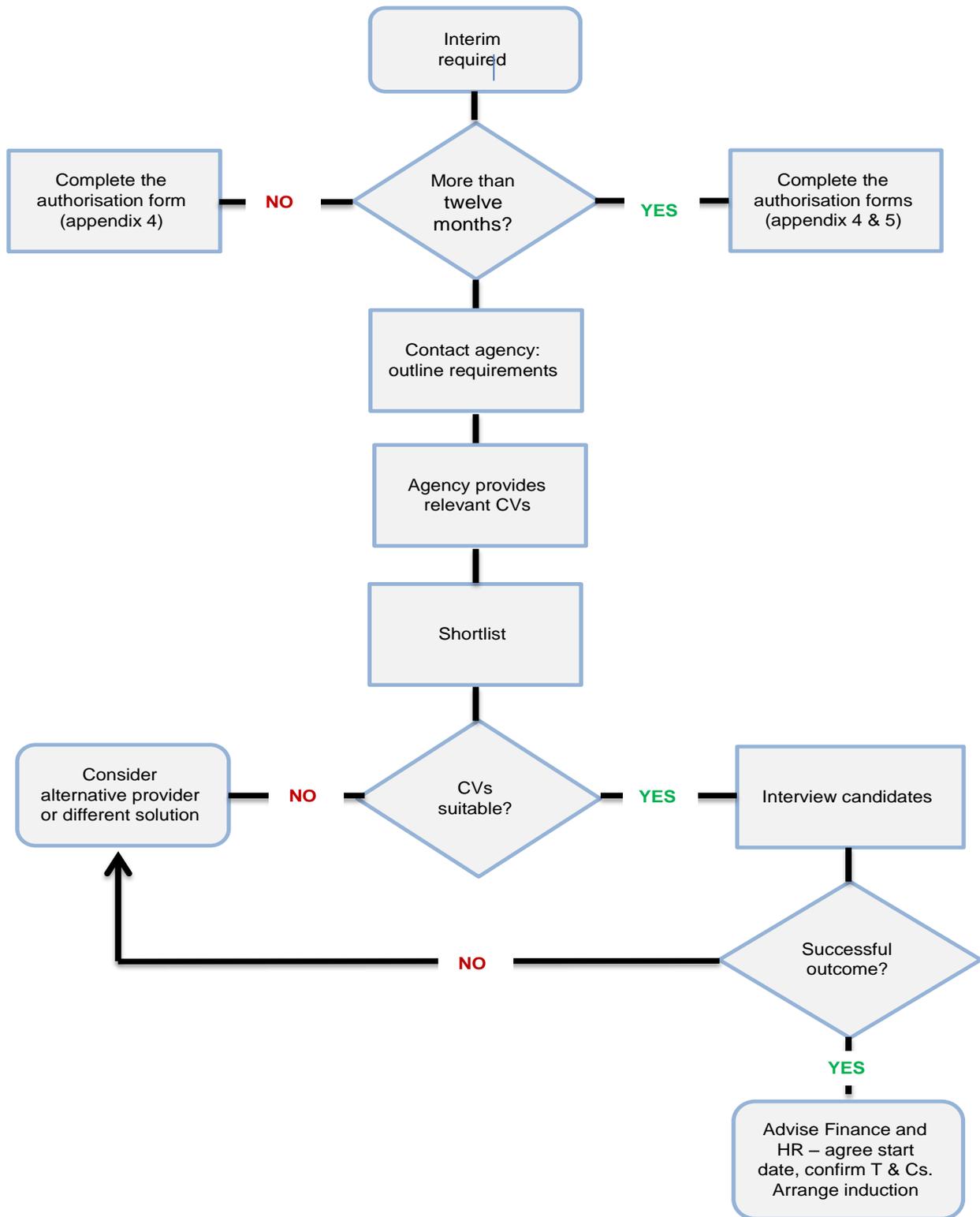
service company. For appointments made through an agency, the agency company is responsible for carrying out the following:

Agency responsibilities:

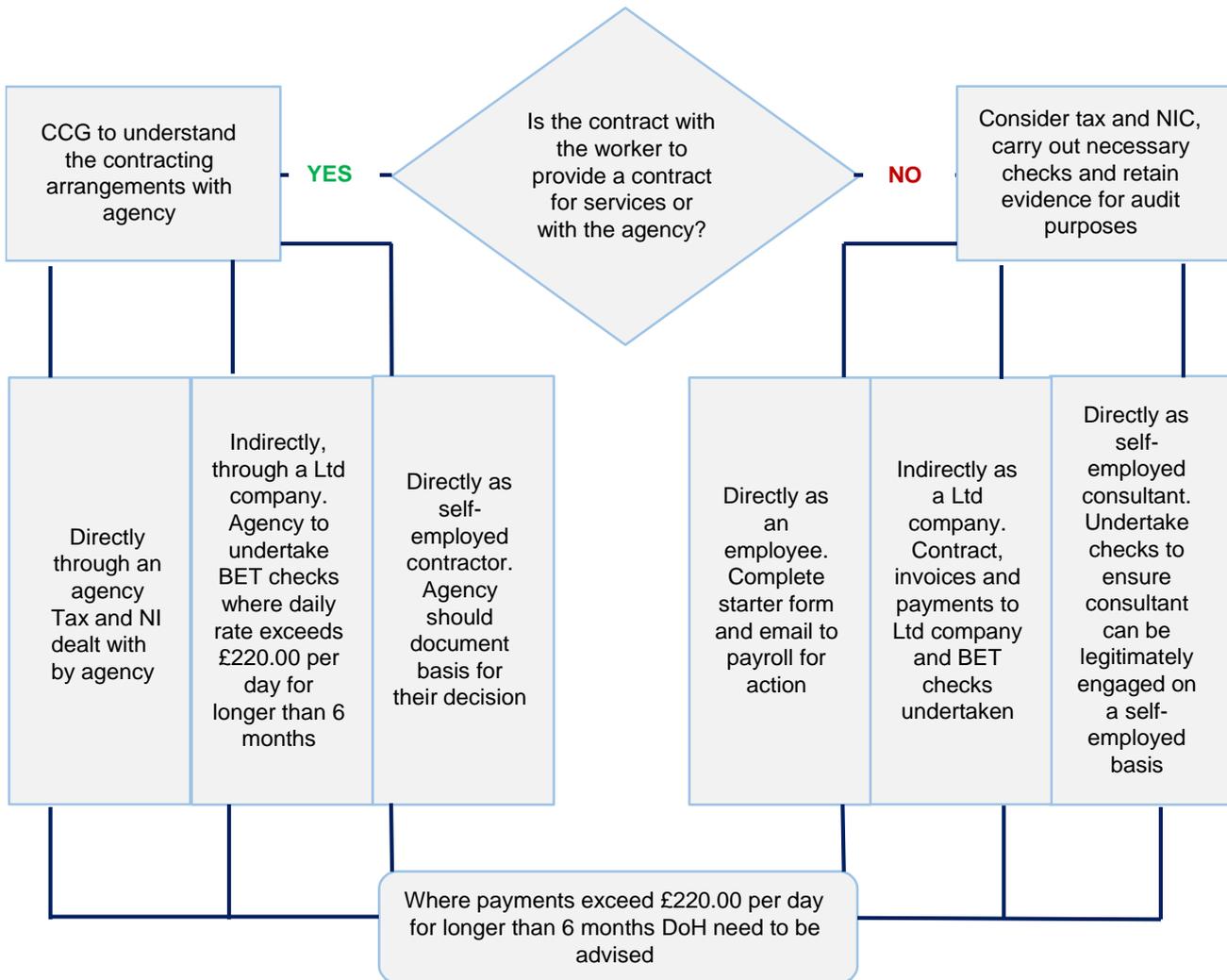
- a. Where the worker is engaged directly by an agency, tax legislation requires PAYE and NIC to be withheld at source by the agency.
- b. Where the worker is engaged directly by an agency, under a contract for services, the agency may pay the individual gross, subject to recent changes to the tax legislation “intermediaries legislation” introduced from 6 April 2014.
- c. The agency should seek to determine whether the worker they provide to the CCG is under the direction, supervision and control of the CCG. If this is the case, PAYE and NIC should be withheld by the agency on all payments to the individual.
- d. Where the worker provides their services through a limited company to the agency, who then subsequently supplies the services of the limited company to the CCG, the agency is required to determine the risk rating of the limited company and provide this to you as the recruiting manager at the 6 month point, where payments to the limited company exceed £220 per day and the contract is for greater than 6 months.

Board members and senior officials with significant financial responsibility should be on the organisation’s payroll, unless there are exceptional circumstances – in which case the CFO and CO should approve these arrangements – and should be for no longer than 6 months.

Appendix 1: Interim and Temporary Recruitment Flowchart



Appendix 2: Tax Flowchart



BET = Business Entity Tests

Tax legislation sets out PAYE and NIC withholding requirements in respect of remuneration payments. The CCG will comply with these requirements and set out below is the process for compliance.

Tax flowchart – specific points to consider depending on the type of engagement indicated above

Contract between Agency and LCCG

- agency is paying worker directly

- Check with agency that they are withholding PAYE and NIC on payments to agency worker
- agency paying worker indirectly through a limited company
 - If individual holds a senior management role and/or is paid more than £220/day for more than 6 month, seek assurance from agency that BET checks have been undertaken and the IR35 risk rating for the Ltd company
 - If the agency confirms an IR35 risk rating as low, continue engagement with agency and monitor for changes, if medium or high risk, refer to HR and review basis of engagement or possibly terminating engagement
- If individual is being paid gross by the agency:
 - seek confirmation from the agency that they have considered any PAYE and NIC withholding obligations

Contract between LCCG and individual directly

- If the engagement is directly with the individual, consider the correct basis of engagement by completing HMRC's online status questionnaire, <https://www.gov.uk/guidance/employment-status-indicator>

Keep a print out of the result and based on the outcome, issue a contract of employment or contract for service as appropriate

If engagement is as a self-employed contractor, review engagement regularly and complete HMRC's ESI questionnaire (and retain print out of decision) if anything changes

<http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest>

- If indirectly through a limited company:
 - ensure the contract for services is between the Ltd company and LCCG, all invoices are raised by the limited company and payment by LCCG is made to the limited company's bank account; and where payments to the Ltd company are more than £220/day or in respect of an individual in a senior management role and for more than 6 months, then obtain evidence required as set out in the BET checks and confirm the IR35 risk rating of the Ltd company <http://www.hmrc.gov.uk/ir35/guidance.pdf>
 - If the IR35 risk rating is low, continue engagement and monitor for changes, if IR35 risk rating is either medium or high, refer to HR and review the basis of engagement and possibly terminating the engagement.

Please return this form and any agency/self employed contractor agreement to Human Resources

Date forms received by Human Resources: Date sent to Mgt Accts:

* If longer than 6 months also complete Appendix 4

Framework agencies to be contacted (minimum three)			
1			
2			
3			
4			
5			
Potential start date:		Day rate expected (ex VAT)	
Expected total cost of appointment:			
Additional expenses:			

Appendix 4: Authorisation of interim assignment exceeding 6 months

Directorate:			
Post title:			
Name of interim:		Extended by:	
Expected cost:			
Funding source:			
Reason for extension:			
IR35 checks applied:			
Line manager:			
Contact details:			
Director of service sign off:		Date:	
CFO sign off:		Date:	
CO sign off:		Date:	

Appendix 5: Approved Agency Contact details

Approved Temporary Staffing Agencies

Agency Supplier	Contact Name	Contact Number	Contact Email Address	Agency Specialism
(NMNC) Framework	John Wilson	0151 6722230	John.Wilson@gps.gsi.gov.uk	National Framework Manager
Allen Lane	Nicole Morris	0203 0319621	NicoleMorris@allenlane.co.uk	Finance
	Becky Pilkington	0203 0319629	beckypilkington@allenlane.co.uk	Admin (B4,5 & 6)
Brook Street	Emma Lines	0208 3632122	emma.lines@brookstreet.co.uk	Admin (B4,5 & 6)
Adept Recruitment	Judy	0203 0639010	judyb@adept-recruitment.co.uk	Finance
Badenoch & Clark	Dean Cordingley		dean.cordingley@badenochandclark.com	Multiple specialisms
	Rob Rendle	0207 6340370	robert.rendle@badenochandclark.com	Multiple specialisms
	Phil Bones		phil.bones@badenochandclark.com	I.T
Morgan Law	Gareth Elwin	0207 7474928	garethelwin@morgan-law.com	Multiple specialisms
	Lara Knights		laraknights@morgan-law.com	Finance
	Bradley Kleyn	0207 7476820	bradleykleyn@morgan-law.com	Commissioning
Hays	Sundeeep Grewal	0207 2598747	Sundeeep.Grewal@hays.com	Admin (B 4&5)
	Adam Hart	020 72598745	adam.hart@hays.com	Finance & Contracts
	Peter Cawood		Peter.Cawood@hays.com	Senior Appointments
Morgan Hunt	Charlotte Harrison		charlotte.harrison@morganhunt.com	Multiple specialisms
	Victoria Sonn	0207 4198911	victoria.sonn@morganhunt.com	Multiple specialisms

Agency Supplier	Contact Name	Contact Number	Contact Email Address	Agency Specialism
Venn Group	Mike Range		mrange@venngroup.com	IT & Commissioning
	Seb Couchman		scouchman@venngroup.com	Finance
Interquest	Thomas Noott	07740 407447	Thomas.noott@itqps.com	Multiple specialisms +Payroll service
Finegreen Associates	Nick Reece		NickR@finegreen.co.uk	Multiple specialisms
	Ben Howlett	0203 5358722	Ben.H@finegreen.co.uk	Multiple specialisms
	David Fleckner		DavidF@finegreen.co.uk	Multiple specialisms
Rethink Recruitment	Chris Walker		CWalker@rethink-recruitment.com	Multiple specialisms
Networkers International	Robert Richardson	0208 3159047	Robert.Richardson@NetworkersPlc.com	HR; IT; Finance; Procurement
Spring Tech	Ian Storey		ian_storey@spring.com	I.T
Spring Personnel	Jess	0207 6593200	jess_hardie@spring.com	Multiple specialisms
Michael Page (Page Personnel)	Justine Paech		justinepaech@michaelpage.com	Finance (senior level)
	Victoria Hillon	0207 2692491	victoriadhilon@michaelpage.com	Comms & Marketing
Randstad	Marcelle Wiseman	0207 4006030	marcelle.wiseman@randstad.co.uk	Multiple specialisms
Reed	Emma Reid	0208 3703600	Emma.Reid@reedglobal.com	Admin (B 4,5 & 6)

Appendix 6: Tax Arrangements of Public Sector Appointees – Model Contractual Provisions

1. *Name of Company (Name of Interim), company registration number XXXXXXXX* is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
2. *Name of Company (Name of Interim)*, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
3. NHS Lewisham CCG may, at any time during the term of this contract, request *Name of Company (Name of Interim)* to provide information which demonstrates how *Name of Company (Name of Interim)* complies with Clauses 1 and 2 above or why those Clauses do not apply to it.
4. A request under Clause 3 above may specify the information which *Name of Company (Name of Interim)* must provide and the period within which that information must be provided.
5. NHS Greenwich CCG may terminate this contract if-
 - (a) in the case of a request mentioned in Clause 3 above-
 - (i) *Name of Company (Name of Interim)* fails to provide information in response to the request within a reasonable time, or
 - (ii) *Name of Company (Name of Interim)* provides information which is inadequate to demonstrate either how *Name of Company (Name of Interim)* complies with Clauses 1 and 2 above or why those Clauses do not apply to it;
 - (b) in the case of a request mentioned in Clause 4 above *Name of Company (Name of Interim)* fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when Clauses 1 and 2 apply to *Name of Company (Name of Interim)* is not complying with those Clauses.
6. Invoices for services must be in the name of a company registered in England & Wales, with the company's registered number shown on the invoice.
7. A statement confirming the company's IR 35 compliance must be provided on request.
8. NHS Lewisham CCG may supply any information which it receives under Clause 3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

Signed:			
Print name:		Date:	

Appendix 7: Template letter requesting tax arrangements from an agency

Dear Colleague

In May 2012, Her Majesty's Treasury (HMT) published its review of tax arrangements for public sector employees. The Department of Health made a number of recommendations as a result of this review.

These recommendations mean that public sector employers which includes NHS Lewisham CCG need to have controls in place, and seek assurances from, "off payroll" workers about their tax arrangements. We need to check or seek assurance from our temporary workers that they are accounting for their tax and national insurance arrangements appropriately.

The review covers all staff paid at least the equivalent of £220 per day for at least 6 months, or whom it is anticipated will work for us for at least 6 months.

Our records indicate that your organisation / company supplies NHS Lewisham CCG with the following worker(s) who meet the conditions above and are paid via your organisation / company:

- XX
- XX

Please provide us with evidence that the worker is having PAYE and NICs deducted at source. Payslips for the previous 6 months will be good evidence, or a HMRC payment letter stating the contributions of tax made. Alternatively, if the individual is employed through a Ltd company, please confirm the result of you having undertaken Business Entity Tests.

Action required from you:

- Please provide the appropriate evidence as indicated above

Please note that the requirement to carry out these checks is a **mandatory requirement** on the CCG, and your kind and prompt assistance and co-operation in this matter is requested.

Yours sincerely

Appendix 8: Equality Impact Assessment & Equality Delivery Scheme Checklist

This is a checklist to ensure relevant equality and equity aspects of proposals have been addressed either in the main body of the document or in a separate equality & equity impact assessment (EEIA)/ equality analysis. It is not a substitute for an EEIA which is required unless it can be shown that a proposal has no capacity to influence equality. The checklist is to enable the policy lead and the relevant committee to see whether an EEIA is required and to give assurance that the proposals will be legal, fair and equitable.

The word proposal is a generic term for any policy, procedure or strategy that requires assessment.

	Challenge questions	Yes/No	What positive or negative impact do you assess there may be?
1.	Does the proposal affect one group more or less favourably than another on the basis of:		
	<input type="checkbox"/> Race	No	
	<input type="checkbox"/> Pregnancy and Maternity	No	
	<input type="checkbox"/> Sex	No	
	<input type="checkbox"/> Gender and Gender Re-Assignment	No	
	<input type="checkbox"/> Marriage or Civil Partnership	No	
	<input type="checkbox"/> Religion or belief	No	
	<input type="checkbox"/> Sexual orientation (including lesbian, gay bisexual and transgender people)	No	
	<input type="checkbox"/> Age	No	
	<input type="checkbox"/> Disability (including learning disabilities, physical disability, sensory impairment and mental health problems)	No	
2.	Will the proposal have an impact on lifestyle? (e.g. diet and nutrition, exercise, physical activity, substance use, risk taking behaviour, education and learning)	No	
3.	Will the proposal have an impact on social environment? (e.g. social status, employment (whether paid or not), social/family support, stress, income)	No	

4.	<p>Will the proposal have an impact on physical environment? (e.g. living conditions, working conditions, pollution or climate change, accidental injury, public safety, transmission of infectious disease)</p>	No	
5.	<p>Will the proposal affect access to or experience of services? (e.g. Health Care, Transport, Social Services, Housing Services, Education)</p>	No	