

Frequently asked questions about the application of “Access” in the NHS for independent providers

When did access commence for the NHS?

Q1 – The consideration of access was included within the Proposed Final Agreement for the new Pension arrangements, when will this commence?

A – Following the regulatory consultation on the provisions for opening the National Health Service Pension Scheme (“the Scheme”) to Independent Providers (IPs) of NHS clinical services, which ran from 2 December 2013 to 10 February, regulations were laid before Parliament on the 11th March 2014 that came into force from 1st April 2014 for such provisions. The employer will need to contact the NHS BSA if they feel they are eligible for access provisions and are choosing as an organisation to apply for either open or closed approval across their contracts.

What contract do I need to hold to be covered under these arrangements?

Q2 - Which contracts are eligible to be covered by the new access provisions?

A – For an Independent Provider to have access to the NHS Pension Scheme as an Employing Authority (EA), they must hold a ‘qualifying contract’.

A ‘qualifying contract’ is defined as follows:

“‘qualifying contract’ means a contract between a relevant commissioning party and an Independent Provider the primary purpose of which is the provision of health care services for the NHS which is;

- (a) an NHS standard contract
- (b) an APMS contract, or
- (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes.

“NHS standard contract” means the standard commissioning contract from time to time drafted by the National Health Service Commissioning Board pursuant to its powers under regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) 2012;

Q3 – Are sub-contractors covered by the access provisions?

A – No, one of the key control mechanisms agreed with the parties involved in the review, including HMT is the contract. This sets the maximum pensionable

pay levels for the organisation and the basis for engagement with the NHS PS through the BSA. BSA will be required by HMT to monitor the position for each Employing Authority and this will be subject to a spot audit process. It would be too difficult to manage this through a sub-contractor process. There is however a review process for the access provisions and this will be one of the factors to be considered within that review. More information, including an application pack is available at the following weblink <http://www.nhsbsa.nhs.uk/Pensions/4328.aspx>

How will it be managed and what does it offer?

Q4 – How will HMT and DH know that private sector organisations are applying this to clinical services only?

A –The NHSPS regulations set out clearly the control mechanisms to ensure the pension entitlement is appropriate. The main control mechanism is the value of the contract, and IPs are be allowed to pension up to, but normally no more than, 75% of their gross income from NHS clinical services contracts. IPs unable to justify their excess pensionable pay over 75% will normally be required to pay an employer contribution surcharge of 12% on the excess income pensioned. In order to support employers in managing this position, only employees who are “wholly or mainly” engaged (i.e. for more than 50% of their time) in providing NHS clinical services will be eligible to join the Scheme. In some cases organisations may need to use a split contract to remain within the 75% cap threshold. The Regulations enable a “*spot audit*” mechanism, which means the Scheme Administrator will be able to call for additional information from IPs and make spot checks on records and pay if necessary. Evidence of an IP’s non-compliance with regulations may lead to the adjustment of individual pensionable pay figures and/or the termination of the IP’s NHS Scheme employing authority status.

Further control mechanisms include;

- Administrative charges and interest for employers who pay contributions late. Charges will only apply to arrears outstanding as at 1 April 2014 or later and employers will pay no interest or administration charges if they pay their scheme contributions by the existing due dates, for example the 19th day of the month following deduction, for regular employee and employer contributions.
- For members of the 1995 final salary section of the Scheme only, employers will in future be charged an “excess employer contribution” for the cost of pension (but not death) benefits calculated on pay increased beyond a new pay increase ‘cap’. The cap will be equal to the level of the CPI + 4.5%. The employer charge will apply to increases made above this cap, in one of more of the final three years prior to retirement. The member’s pension benefits are NOT reduced and will continue to be calculated on uncapped pay. If the payment has been authorised by a central body – such as Advisory Committee on Clinical Excellence Awards (ACCEA) - any employer charge generated will be down to the national body. BSA will bill directly the Department’s funding body responsible for national CEA, not the local employer. However, pay

increases due to local CEA that are recommended by the employer *will* count for pay control purposes, like any other local pay increase. It is worth remembering though that the majority of consultants who progress through CEA levels, one stage at a time, whether for a local or a national award, will not normally trigger a local employer or an ACCEA generated charge.

These two control mechanisms will apply to all organisations, including NHS organisations. Further detail is available in the explanatory memorandum and the consultation response available at:

Consultation response

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/287826/Consultation_Response_April_2014_SI_FINAL.pdf

Explanatory Memorandum

<http://www.legislation.gov.uk/ukxi/2014/570/memorandum/contents>

Q5 - What else will I have to do as an employer in the NHSPS (admin/information requirements, etc)

A - Like other NHS employers there will be a requirement to comply with the NHSPS Regulations referred to in the [Employer's Charter](#), available at the following weblink: <http://www.nhsbsa.nhs.uk/3542.aspx>. Consideration is being given to a programme of training that can be provided to support independent providers and BSA can provide further information about this.

Q6 - What other restrictions may there be?

A – All the control mechanisms are outlined at Question 4. Prior to consultation there was a further mandatory control mechanism of a conditional guarantee or “bond” provision. However a number of IPs expressed concern that a requirement to routinely provide and update a contributions guarantee would add significant costs, reduce funds available for reinvestment, and could be a barrier for smaller providers. In response, the Department has accepted a suggestion that IPs should only be required to provide such a guarantee where they fail, or have previously failed to meet their liabilities under the regulations in any other capacity as an employing authority. There remains a provision in the regulations for the Secretary of State to require a guarantee from an IP if he has reasonable grounds to believe that the organisation is unable, or likely to become unable, to meet those liabilities. The regulations also include a provision for arrears of contributions to be deducted from contract funding held by the relevant commissioner, if deemed necessary.

Q7- What is the legal relationship between NHSPS membership and the contract?

The regulations the National Health Service Pensions Scheme (Amendment) Regulations 2014 - SI 570 provide the legal basis for the access provisions. In addition the contract provisions in either:

- (a) an NHS standard contract
- (b) an APMS contract, or
- (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes.

Will there be training?

Q8 – Will there be training provided to inform independent providers what would be required from employers from the NHSPS administration.

A –DH are currently working with the NHS BSA and HMT on the training requirement in order to deliver access to IPs. Certainly, the Employers Charter sets out the roles and responsibilities for both NHS BSA and any employer who has staff in the NHSPS. This is a very useful starting point. Discussion with the Independent Sector Review Group at DH will also consider the training requirement further. NHS BSA are developing a training pack to support organisations who have not previously had access to the NHSPS. This will be made available via their website.

What are the financial implications for our organisation?

Q9 - How much will the NHSPS cost the organisation?

A – The decision on the degree of access to provide to an organisation is a local matter and driven by recruitment and retention considerations across the clinical workforce. The strategic decision has to be made by the organisation based on the three levels of access available to the IP namely:

A. New Fair Deal - this level of scheme access is provided under the government's policy for dealing with pensions when staff are compulsorily transferred from a public sector scheme to an independent provider. In simple terms, staff compulsorily transferred from the NHS to an IP must, from 7 October 2013, be offered access to the NHS Scheme, normally arranged by means of a Pension Direction.

B. IP Access “closed” approval – this level of scheme access is optional. In simple terms, an IP that has been approved by the Scheme Administrator as a NHS employing authority can choose to routinely join in the NHS Scheme ALL their staff who have moved to their employment voluntarily and had, within the 12 months prior to joining the IP, been entitled to join the NHS Scheme

C. IP Access “open” approval – this level of access is also optional. An IP that has been approved by the Scheme Administrator as a NHS employing authority can choose to routinely join in the NHS Scheme ALL

their staff, whether or not they have previously been entitled to join the NHS scheme

An IP is *obliged* to join compulsorily transferred New Fair Deal staff in the NHS Scheme. However, a decision as to whether or not an IP should also *choose* to offer the NHS Scheme to staff who join them voluntarily, is a strategic one they must make, taking into account the particular circumstances of the contract they are bidding for, including market position, costs and any recruitment and retention issues.

IPs wishing to view more information and guidance about obtaining a Pension Direction can do so at <http://www.nhsbsa.nhs.uk/Pensions/4327.aspx>

IPs wishing to apply to the NHS Scheme Administrator for approval as a NHS Scheme employing authority will shortly be able to view more information at <http://www.nhsbsa.nhs.uk/Pensions/4082.aspx>

When considering the financial implications of those covered by New Fair Deal this will actually reduce the costs for TUPE'd/compulsory transferred staff as compared to the current "broadly comparable" position. Currently a "broadly comparable scheme" adds at least 12% to employers' pensions contributions (over and above the employers' contributions to the NHS pensions scheme) – with some schemes considerably more. Given that the NHSPS scheme is an unfunded scheme, backed by Government, this means that the pension liability is covered by employer and employee contribution rates. The current employer contribution rate is 14%. There should normally be no other liabilities, provided that the organisation remains within the regulatory control mechanisms.

Q10 – What are the contribution rates for employers and employees?

A - The contribution rates will be the same as those for NHS employers. The employer contribution rate is currently 14%, while the employee contribution rates from April 2014 are based on a tiered approach as set out below -:

Full-time equivalent pensionable pay	Contribution rate
Up to £15,278	5.0%
£15,279 to £21,175	5.6%
£21,176 to £26,557	7.1%
£26,558 to £48,982	9.3%
£48,983 to £69,931	12.5%
£69,932 to £110,273	13.5%
Over £110,273	14.5%

These rates may change from April 2015. The valuation outcome has provisionally been identified an uplift to 14.3% for the employer contribution.

The employee rates are currently under consideration and trade unions and employers are involved in that discussion.

Q11 – How might the employer contribution change over time?

A – The contribution rates in the NHSPS are set through an actuarial valuation process. Like other NHS employers, there will be a requirement for independent sector providers to comply with any future changes in employer and employee contribution rates based on the process. There are governance arrangements in place currently for the NHSPS – these will change over time in line with the requirements of the Public Service Pensions Act 2013 and a Scheme Advisory Board and Pension Board are due to be in place in “shadow” form from June 2014.

One of the further requirements of the Act, and in line with Lord Hutton’s recommendation, an employer cost cap will be introduced that will provide an automatic mechanism to reduce the employer contribution rate if certain elements of scheme costs increase by more than 2 percentage points. While in practice not all employer costs will be captured by this cap – and so the employer contribution rate may rise by more than 2 percentage points - the contribution rate is still very likely to remain well below the cost of providing a “broadly comparable scheme”.

Q12 - Are the RoE arrangements being removed by DH?

A: No. The new requirements apply to “qualifying contracts”, which broadly refers to situations where the private sector provides clinical services to NHS patients. Retention of Employment secondments in those contracts will be replaced by the new access provisions. However, Retention of Employment is also used in other situations, such as soft FM services delivered by private contractors in hospital PFI schemes. Those arrangements are not affected and will continue.

Q13 - I work for a PFI company as a hospital cleaner/porter/catering assistant. I’m worried this means I will lose my right to be in the NHS Pension Scheme. Do I still qualify?

A: If you work in any of the “soft” facilities management services transferred to a private contractor as part of a PFI scheme, you do not need to worry. These arrangements are not affected by the new regulations and can continue.