

“What happens to my pension?”

A guide to pension rights of staff transferring from direct employment in the NHS to work for other organisations providing healthcare services to the NHS

- in contracted services organisations (GMS, PMS, APMS, SPMS)
- in voluntary/not-for-profit organisations
- in local authority partnerships
- in the private sector

Introduction

In some circumstances, staff who leave direct NHS employment to join another organisation providing health care services to the NHS can continue to benefit from membership of the NHS Pension Scheme. This depends on the nature of the new employer organisation, and the circumstances of the transfer from NHS to non-NHS employment.

This guide provides outline advice on access to the NHS Pension Scheme according to the type of organisation to which staff transfer and modifications to the benefits that may be offered. It also sets out advice about employer responsibilities for pension provision where staff must leave the NHS Pension Scheme.

The information is intended for employers and employees as a general guide, and states the position as at *November 2009*. It is not a full statement on the law governing the NHS Pension Scheme. Sources of more detailed information are indicated, and we recommend that specific legal and financial advice is taken before any final decision on pension arrangements.

Contents

Summary

1. NHS contract services providers
 2. Direction employers
 3. NHS / Local authority partnerships
 4. Transfer outside NHS Pension Scheme
- Contacts. Further information

Summary

The NHS Pension Scheme is provided for the benefit of staff who are directly employed within the NHS in England & Wales in an 'employing authority':

- NHS Trust
- NHS Foundation Trust
- Primary Care Trust
- Health Authority
- Special Health Authority
- Strategic Health Authority
- Local Health Board

and for the benefit of medical services providers and their staff operating under a NHS contract to deliver:

- General Medical Services (GMS)
- Personal Medical Services (PMS)
- Alternative Provider Medical Services (APMS)
- Specialist Provider Medical Services (SPMS)
- Out of Hours Service Providers

There are two other categories of organisation whose employees may (with the prior approval of the Secretary of State) have access to the NHS Pension Scheme:

- **Direction employers** – principally not-for-profit organisations in the voluntary sector that support the NHS in the provision of health care
- **Joint NHS and Social Care partnerships to provide integrated health care** – staff are able to retain membership of their original pension schemes when they are transferred to the NHS or Local Authority

In all other cases, staff who join a non-NHS employer will normally lose access to the NHS Pension Scheme. However, if the move is compulsory, then the new employer will be required to provide broadly equivalent pension benefits as part of the '**Fair Deal for Pensions**' policy. Where the move is voluntary staff should be offered the opportunity to join the new employers pension scheme.

The following pages provide more information on each situation. Continued access will depend on the employing organisation being able to operate the NHS Pension Scheme, and there may be changes to related Injury and early retirement benefits.

1. NHS Contract Services Providers

Since April 2004, PCTs have had powers to contract with providers for primary medical services through four routes:-

- General Medical Services (GMS)
- Personal Medical Services (PMS)
- Alternative Provider Medical Services (APMS)
- Specialist Personal Medical Services (SPMS)

(More information about primary care contracting can be found at:
<http://www.primarycarecontracting.nhs.uk/1.php>)

NHS Pensions Regulations enable those eligible to provide GMS or PMS, and their staff, to remain in or join the NHS Pension Scheme. This includes organisations providing services under an APMS or SPMS contract, as long as they meet the conditions of eligibility for a GMS or PMS contract. (If the service provider is a NHS Trust or a Foundation Trust, staff have the same pension rights as other NHS Trust or Foundation Trust employees.)

For pension purposes, GMS/PMS staff will be treated as practice staff. Practice staff have access to the main NHS Pension Scheme (the final salary scheme, including family and ill health benefits) but do not have access to the separate but related NHS Injury Benefit and early retirement Compensation Schemes. For staff who have compulsorily transferred to a GMS/PMS practice the practice must make separate arrangements for injury benefit and early retirement on the grounds of redundancy.

Criteria

Eligibility of staff for membership of the NHS Pension Scheme is dependent upon the organisation meeting the requirements for a GMS/PMS contract. Before entering into an agreement the PCT must be satisfied that the organisation fulfils these conditions. In turn, the organisation must satisfy itself that it meets the eligibility criteria under the NHS Pension Scheme regulations.

Scheme Costs

The employer contributes 14% of pensionable pay and the employee contributes a percentage of their salary. The employee contribution rates for 2009/10 are:

Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 - £107,846	7.5%
over £107,847	8.5%

these are adjusted annually and notified to the NHS via newsletter.

Application

Once a PMS or GMS agreement is in place, a copy of the agreement and associated corporate documentation (for example, the Memorandum and Articles of Association) must be sent to the Pension Division of the NHS Business Services Authority (see Contacts). The Pension Division handles administration of the NHS Pension Scheme for England and Wales and will have to confirm eligibility.

2. Direction Employers

Organisations that support the NHS by providing health services not normally available within the NHS can seek a Direction from the Secretary of State for Health that their employees be given access to the NHS Pension Scheme. A Direction is normally only given to voluntary sector / not-for-profit organisations. The aim is to facilitate the movement of staff between the NHS and non-public sector health service employment.

Examples include:

- hospices
- care in the community services
- university medical schools
- institutes involved in research
- Social Enterprises established under the Right to Request

Directions for such employers are granted under Section 7 of the Superannuation (Miscellaneous Provisions) Act 1967.

Directions are generally only available to those involved in a transfer from the NHS to the organisation on a particular day, or limited to particular jobs or individuals.

Employees who join the Scheme under a Direction, are not normally covered by the separate but related National Health Service (Compensation for Premature Retirement) Regulations 2002 or National Health Service (Injury Benefits) Regulations 1995. For staff who have compulsorily transferred their new employer must make separate arrangements for injury benefit and early retirement on the grounds of redundancy.

Criteria

NHS Pensions handles administration of the NHS Pension Scheme for England and Wales, including Direction employers. In order to advise the Secretary of State on eligibility for a Direction, NHS Pensions will need the following information (though the list is not exhaustive and some questions may not be applicable)

1. full title of organisation
2. whether the organisation is in the voluntary sector and is a “not for profit” organisation (If applicable, provide the registered charity number.)
3. any promotional/publicity material, or a description of the aims and objectives of the organisation.
4. method of funding for the organisation
5. details of any links with the NHS or other public sector services.

6. the names, national insurance numbers and job titles of the staff being transferred
7. the full title of the current NHS employer, including a contact name and address
8. whether the staff will continue to care for patients they previously cared for whilst employed by the NHS
9. confirmation of the method of patient referral
10. the date the transfer will take place
11. whether the staff involved in the transfer are covered by TUPE regulations

If a compulsory transfer:

- the circumstances leading to the transfer and whether the transfer will ensure continuity of patient care
- how the project or transfer would be affected if the application was rejected
- whether there is already alternative pension provision in place for the organisation's existing staff.

If a voluntary transfer:

- whether the individual is moving to a hospice or other organisation
- whether the individual intends to return to the NHS at some point in the future, and how their work with the organisation applying for the Direction will benefit the NHS on their return
- whether the organisation has links to or is funded (in whole or part) by a NHS Trust or PCT

Scheme Costs

The employer contributes 14% of pensionable pay and the employee contributes a percentage of their salary. The employee contribution rates for 2009/10 are:

Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 - £107,846	7.5%
over £107,847	8.5%

these are adjusted annually and notified to the Scheme employers via newsletter.

Application

There is no application form. Information should be submitted to NHS Pensions (see Contacts) covering all of the relevant points above.

3. Partnership Arrangements

Partnership arrangements may be set up between NHS organisations and Local Authorities to provide integrated health and social care. These partnerships may be structured in a variety of forms, and in some circumstances may involve compulsory transfer of staff between health and social care sectors: that is, from NHS to Local Authority employers or vice versa.

These partnerships are governed by Section 75 of the Health Act 2006, under which the Secretary of State may allow staff to maintain their existing pension scheme membership following the transfer.

Criteria

The Secretary of State may allow NHS staff who are moved compulsorily to Local Authority employment under a Section 75 partnership to continue in the NHS Pension Scheme. This is enabled by a Transfer Order and can provide that all existing terms and conditions of service, including pensions, may continue (subject only to such modifications as the Secretary of State may direct).

Each Transfer Order has to be drawn up by Department of Health lawyers before the move from one employer to another takes place. It cannot be made retrospectively, so it is essential that the Department be alerted as early as possible about the intended transfer.

If for any reason the Department is alerted *after* the transfer, it may be possible to arrange continued access to the NHS Pension Scheme under a 'Direction', (see part 2 of this guide), although this cannot be guaranteed. Any such 'Direction' can only relate to membership of the pension scheme, and cannot cover NHS Terms and Conditions. Employers will need to consider carefully and consult staff about this option.

These arrangements do not apply to staff moving between sectors on a voluntary basis. Similarly, retention of original scheme membership is only appropriate for so long as the member of staff remains in the post to which they were transferred. For example, if they move voluntarily to another job within the employer's organisation, under fair and open competition, they would be expected to move to that employer's pension scheme. They would then be free to apply to transfer their accumulated pension benefits to their new employer's scheme.

Scheme Costs

The employer contributes 14% of pensionable pay and the employee contributes a percentage of their salary. The employee contribution rates for 2009/10 are:

Up to £20,709	5%
£20,710 to £68,392	6.5%
£68,393 - £107,846	7.5%
over £107,847	8.5%

these are adjusted annually and notified to the Scheme employers via newsletter.

Application

There is no application form. Information should be submitted to NHS Pensions (see Contacts) as early as possible before the transfer process, for forwarding on to the Department of Health.

4. Transfer to employers outside the NHS Pension Scheme

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) seek to protect employees' contractual terms and conditions when they are transferred compulsorily to an organisation outside the NHS. These conditions apply to all NHS employees who are obliged to move to a private sector employer,.

TUPE: Redundancy and severance terms

Under TUPE regulations, the new employer must replicate NHS redundancy and severance terms or, where these cannot be replicated, then they must offer either broadly comparable terms or terms of equivalent value. These redundancy benefits must be provided under the terms of the contract with the new employer. This would cover redundancy payment as defined under the Collective Agreement, and any pension payable on redundancy including the value of extra service (if any) under the National Health Service (Compensation for Premature Retirement) Regulations 2002.

“A Fair Deal for Pensions”

The 2006 TUPE regulations provide limited protection for pension benefits. Government guidance — “A Fair Deal for Pensions” — goes further than the obligation under TUPE. Government policy is that former public sector employees transferred to the private sector should continue to have equivalent pension provision made for them. The new employer is required to offer transferred employees occupational pension provisions which are “broadly comparable” to that offered by their public sector employer. The Government Actuary is responsible for certifying whether or not the receiving employer's Scheme is ‘broadly comparable’.

Key points

- ❑ when staff are compulsorily transferred out of a public sector pension scheme, they must be provided with a ‘broadly comparable’ private sector scheme for their future service;
- ❑ transferred staff must also have the cover of a ‘bulk transfer agreement’ that allows them, if they wish, to maintain a link between their future earnings growth and their past service pension benefits;
- ❑ the costs of this bulk transfer agreement may be a significant element in the overall costs of any out-sourcing project;
- ❑ the bulk transfer agreement should be handled as an integral part of the competition for the overall procurement, with the terms of the agreement being advertised at the earliest stage and being finalised before staff transfer.

‘Fair Deal for Pensions’ is not intended to apply to transfers between private sector employers except in the case of staff originally transferred from the public

sector with protected pension benefits. These staff must also have been continuously employed in the delivery of the out-sourced public service since being transferred to the private sector.

Contacts. Further information

If you would like to apply for a Direction or want more information on access to the NHS Pension Scheme and relevant regulations, please write to:

NHS Pensions
Scheme Compliance - Directions
Hesketh House
200-220 Broadway
Fleetwood
Lancashire
FY7 8LG

NHS Pension Scheme eligibility

Detailed conditions of eligibility for the NHS Pension Scheme can be found in the National Health Service Pension Scheme Regulations 1995 (as amended). The various regulations can be found on the following page of the NHS Pensions website:.

<http://www.nhsbsa.nhs.uk/Pensions/Regulations.aspx>

NHS Contract Service Providers

More information about primary care contracting can be found at:

<http://www.primarycarecontracting.nhs.uk/1.php>

TUPE

- Cabinet Office's Statement of Practice 'Staff Transfers in the Public Sector' <http://www.civilservice.gov.uk/publications/pdf/stafftransfers.pdf>
- Fair Deal For Staff Pensions: Procurement Of Bulk Transfer Agreements And Related Issues *Guidance Note by HM Treasury, June 2004.* <http://www.civilservice.gov.uk/publications/doc/btapublicfinal.doc>