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 (“NHSPS”) to Independent Providers (IPs) of NHS clinical services, which ran from 2 December 2013 to 10 February 2014, 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 access provisions?

A: For an Independent Provider to have access to the NHSPS 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 clinical health care services for the NHS and which is;

(a) an NHS standard contract
(b) an APMS contract,
(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; or
(d) an NHS standard sub-contract

“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;
“NHS standard sub-contract” means a sub-contract that complies with the Department of Health guidance “NHS Standard Sub-Contract for the Provision of Clinical Services 2016/17”

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

An organisation which holds an NHS standard sub-contract can apply for access to the NHSPS. However, such access can only be considered in circumstances where the main NHS standard contract (from which the sub-contract flows) is held by an NHSPS employing authority.

More information, including an application pack is available at the following weblink: 
https://www.nhsbsa.nhs.uk/employer-hub/access-nhs-pension-scheme

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 be charged an “excess employer contribution” for the cost of pension (but not death) benefits calculated on pay increased beyond the 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 or 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. Pay increases that relate solely to changes in the National Minimum Wage and National Living Wage are excluded when assessing the increase ‘cap’.

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

Consultation response

Explanatory Memorandum

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:
https://www.nhsbsa.nhs.uk/employer-hub

NHS BSA have produced a quick start guide for employers; this provides a broad overview regarding administration of the NHSPS. The guide is available via the following weblink:
https://www.nhsbsa.nhs.uk/nhs-pensions
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?

A: The NHSPS 1995/2008 and 2015 regulations detail the legal basis for the access provisions which include a requirement to be party to a qualifying contract i.e.

(a) an NHS standard contract
(b) an APMS contract,
(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; or
(d) an NHS standard sub-contract

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: NHS BSA have developed a quick start guide to the NHSPS to support organisations who have not previously had access to the scheme; this is available via the following weblink:
https://www.nhsbsa.nhs.uk/nhs-pensions

The NHS BSA Stakeholder Engagement Team is in place to assist employers who participate in the NHSPS. They can be contacted at the following email:
nhsbsa.stakeholderengagement@nhs.net
In addition, the Employers Charter sets out the roles and responsibilities for both NHS BSA and any employer who has staff in the NHSPS. The Charter is available via the following weblink: 
https://www.nhsbsa.nhs.uk/employer-hub

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/Determination.

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/Determination can do so at: 
https://www.nhsbsa.nhs.uk/employer-hub/access-nhs-pension-scheme

IPs wishing to apply to the NHS Scheme Administrator for approval as a NHS Scheme employing authority can do so at: 
https://www.nhsbsa.nhs.uk/employer-hub/access-nhs-pension-scheme
When considering the financial implications of those covered by New Fair Deal this will actually reduce the costs for TUPEd/compulsory transferred staff as compared to the “broadly comparable” position.

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. With effect from 1 April 2017 employers pay 14.38% (14.3% employer contributions plus 0.08% administration levy). 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. With effect from 1 April 2017 employers pay 14.38% (14.3% employer contributions plus 0.08% administration levy). The employee contribution rates are based on a tiered approach as set out below:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Pensionable Pay (whole time equivalent) used to determine contribution rates</th>
<th>Contribution rate (before tax relief) (gross) from 1 April 2015 to 31 March 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Up to £15,431.99</td>
<td>5.0%</td>
</tr>
<tr>
<td>2</td>
<td>£15,432.00 to £21,477.99</td>
<td>5.6%</td>
</tr>
<tr>
<td>3</td>
<td>£21,478.00 to £26,823.99</td>
<td>7.1%</td>
</tr>
<tr>
<td>4</td>
<td>£26,824.00 to £47,845.99</td>
<td>9.3%</td>
</tr>
<tr>
<td>5</td>
<td>£47,846.00 to £70,630.99</td>
<td>12.5%</td>
</tr>
<tr>
<td>6</td>
<td>£70,631.00 to £111,376.99</td>
<td>13.5%</td>
</tr>
<tr>
<td>7</td>
<td>£111,377.00 and over</td>
<td>14.5%</td>
</tr>
</tbody>
</table>

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.

The last published actuarial valuation undertaken for the NHSPS was as at 31 March 2012 and published in June 2014. The primary purpose of the 2012 actuarial valuation was to set the employer contribution rate payable from April 2015, in light of the introduction of the new pension arrangements from 1 April 2015, and the initial employer cost cap (maximum employer contributions) which is required by the Public Service Pensions Act 2013.
Both the employer contribution rate and employer cost cap have been included in scheme regulations.

The next actuarial valuation is expected to be carried out as at 31 March 2016. This will set the employer contribution rate payable from April 2019 and will consider the cost of the scheme relative to the employer cost cap. There are provisions in the Public Service Pensions Act 2013 to adjust member benefits or contribution rates if the cost of the scheme changes by more than 2% of pay. Subject to this employer cost cap assessment, any required revisions to member benefits or contribution rates will be determined by the Secretary of State for Health after consultation with the relevant stakeholders.

Q12 – Are there any assurance and governance arrangements in place for the NHSPS?

A: There are assurance and governance arrangements in place for the NHSPS. The NHS Pension Board has responsibility for setting and monitoring the performance of the NHPS administrator.

The Board includes a number of employer and member representatives and is overseen by an independent chair. Further information regarding the NHS Pension Board is available at the following weblink: https://www.gov.uk/government/groups/nhs-pension-board

Q13 - Are the RoE arrangements being removed by DH?

A: From 1 April 2017, arrangements by which employers could retain scheme membership for staff by seconding them to a non-NHS employer came to an end, if those staff could become scheme members under the Access arrangements. However, approved uses of Retention of Employment, which generally relate to soft FM services delivered by private contractors in hospital PFI schemes, are not affected and can continue.

Q14 - 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 access provisions and can continue.

Need to know more?

If you have any questions please see the weblinks and contact details below:

a) To make an application for access to the NHSPS:
weblink: https://www.nhsbsa.nhs.uk/employer-hub/access-nhs-pension-scheme

eemail: nhsbsa.schemeaccess@nhs.net

b) To seek assistance with administration of the NHSPS:

eemail: nhsbsa.stakeholderengagement@nhs.net