

NHS Pensions

A guide to applying to become a direction / determination / New Fair Deal employing authority (EA)

Direction / determination / New Fair Deal employing authority (EA) access to the NHS Pension Scheme

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Overview

The purpose of this guide is to inform employers on how to become a direction / determination / New Fair Deal employing authority, including how to access the NHS Pension Scheme and specific rules and regulations that impact them. General information regarding the NHS Pension Scheme and administration of the scheme is available on our website.

NHS Pension directions

An NHS Pension direction is a legal document drafted under powers conferred within Section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 and provides access to the 1995/2008 NHS Pension Scheme.

NHS Pension determinations

An NHS Pension determination is a legal document drafted under powers conferred within Section 25 of the Public Service Pensions Act 2013 and provides access to the 2015 NHS Pension Scheme.

New Fair Deal

New Fair Deal (NFD) is a non-statutory policy issued by HM Treasury in October 2013 which sets out how pension issues are to be dealt with when staff are compulsorily transferred from the public sector to the private sector.

Closed access

A direction / determination authorised in respect of New Fair Deal will be 'closed' which means that it will be restricted to those staff listed in the official documentation, who are the subject of the relevant transfer and who comply with the terms of the direction / determination and the NHS Pension Scheme Regulations.

If your organisation already has closed direction / determination access and you receive further staff by another compulsory transfer a new closed direction / determination application will be needed for each compulsory transfer.

How to become a direction / determination / New Fair Deal employing authority

When a compulsory transfer takes place from an NHS organisation or an existing direction employer to a non-NHS organisation, the organisation should apply for a closed direction / determination in respect of the eligible staff who are part of the compulsory transfer.

If you wish to apply, the application form for an NHS Pension direction / determination can be found [here](#)

If you have staff transferring to your organisation from an independent provider employing authority (IPEA) or an Out Of Hours provider (OOHP) please contact the Scheme Access Team at nhsbsa.schemeaccess@nhs.net for guidance. These staff may not be eligible to be included in the direction / determination application.

Bulk transfers from a broadly comparable pension scheme

In circumstances where the transferring staff have built up rights in a broadly comparable pension scheme, for example following a transfer from the NHS under the previous Fair Deal policy also known as Old Fair Deal (OFD), following the New Fair Deal (NFD) guidance all such staff should generally be given the option to bulk transfer their accrued rights into the NHS Pension Scheme in order to obtain day-for-day service credits (or actuarial equivalent reflecting benefit differences between schemes).

As this can be a complex area it is recommended that employers / contracting authorities seek actuarial, employment and procurement legal advice in this regard.

Further related guidance can be viewed at the following links:

[Fair Deal policy and NHS Pension Scheme](#)

[Social Partnership Forum Workforce Issues Group](#)

Open access

Open direction / determination access may be available to some organisations which will allow new starters to gain access to the NHS Pension Scheme.

Hospices - Two types of access are available, open access and open regulated professions access.

Medical Schools - Access is currently under review by Department of Health and Social Care.

Wholly owned subsidiaries - Open access for approved roles is available.

Primary Care Networks (PCN) - Time limited open access is available pending a review by Department of Health and Social Care.

If you want access to the NHS Pension Scheme under any of these open access types please contact the Scheme Access Team who will assist you in making your application.

If your organisation already has open access and you receive staff by a compulsory transfer a closed direction / determination application will be needed

Local authorities

Local authorities can have both open and closed access. There are four types of access available:

- Transfer of Staff Order; these are in respect of Section 75 partnership arrangements between the NHS and Local Authority (restricted to staff who transferred on the date specified in the order).
- Public Health Staff Transfer Scheme; in respect of the public health transfers which took place on 1 April 2013 (restricted to staff who transferred on the 1 April 2013 as part of the NHS Reforms).
- Closed direction / determination; in respect of compulsorily transferred staff (restricted to the employees listed in the schedule attached to the direction / determination).
- Public Health open direction / determination; in respect of eligible new recruits who satisfy the terms detailed in the relevant direction / determination.

If you want access to the NHS Pension Scheme under any of these open access types please contact the Scheme Access Team who will assist you in making your application. Local authorities wishing to apply for closed direction / determination access should submit a direction / determination application form.

If your organisation already has open access and you receive staff by a compulsory transfer a closed direction / determination application will be needed.

The application process

Although processing is done by the Scheme Access Team at NHS Pensions, all applications must be approved by the Department of Health and Social Care.

For closed direction / determination applications, once the application form has been received, we contact the organisation the staff are transferring from and the contracting authority / commissioner of the service for verification of the application. Once the date of transfer has taken place, we need to establish a corroborative final staff list of all eligible staff who were part of the compulsory transfer. As the information we need is obtained from third parties this can sometimes cause delays in sending a completed application to the Department of Health and Social Care for their consideration.

Open direction / determination applications are generally submitted to the Department of Health and Social Care as a business case with any supporting evidence submitted by the applicant. Most cases do not require further information from third parties but these cases are required to be signed off by a Senior Officer within the Department of Health and Social Care and may take longer to be considered.

Employee status in the scheme

All NHS Pension Scheme members are officers, there are no practitioners. This includes GPs and bank staff employed by a direction / determination / New Fair Deal employing authority who meet the terms of the relevant legal documents.

An NHS Pension direction employee can retain Special Class (SC) / mental health officer (MHO) status providing they continue to satisfy the relevant criteria. Further guidance regarding SC / MHO status and the relevant criteria is available on our website [here](#)

Staff eligibility

Employers have an obligation to auto-enrol into the NHS Pension Scheme every eligible employee whose name is listed in an NHS Pension direction / determination and who meets the terms of the legal documents. For more information about auto-enrolment and eligibility, please see our website [here](#)

Every eligible employee has the right to opt out of the Scheme by completing form SD502 available to download [here](#)

An eligible employee can opt out and subsequently opt back into the NHS Pension Scheme if they wish, provided they continue to satisfy the criteria of the direction / determination at the point of opting back in.

When it comes to auto re-enrolment, if employees are still eligible you must re-enrol them in the NHS Pension Scheme as part of your ongoing responsibilities.

In line with New Fair Deal, staff whose employment is compulsorily transferred from the public sector will be entitled to retain membership of or eligibility for the NHS Pension Scheme if they were eligible to join immediately prior to the transfer.

The only compulsorily transferring staff members who will not be eligible to join the NHS Pension Scheme are those who:

- Are aged over 75.
- Have reached 45 years' pensionable membership in the 1995/2008 NHS Pension Scheme.
- Are in receipt of pension benefits from the 1995 Section.
- Were not the subject of the original compulsory transfer from the NHS (if this is a second or subsequent generation transfer).
- Are aged over 60 with deferred benefits in the 1995 Section.

To determine whether staff are eligible to be included within a direction / determination application we need to establish whether or not they hold a 'golden thread'.

The 'golden thread' relates to a member of staff that has been the subject of one or more compulsory transfers originating from the NHS that is from a trust, foundation trust, classic APMS contractor or GMS, PMS provider.

If the staff are compulsorily transferred to any non-NHS organisations a direction / determination order must be applied for. The 'golden thread' can be 'broken' if a member of staff joins a company as a new starter rather than as part of a compulsory transfer. Subsequently they will not be eligible to be included in the direction / determination application.

Where a person is ineligible to join the NHS Pension Scheme their employer must consider their auto-enrolment liabilities.

For applications in accordance with New Fair Deal, you must identify those staff who are eligible and meet the wholly or mainly (more than 50%) criteria and you must issue them with the NHS Pensions Scheme guides, either by attaching them to an email or in hard copy, in line with Regulation 26 of The Occupational and Personal pension Schemes (Disclosure of Information) Regulations 2013 and the NHS Pension Scheme Employer Charter. Copies of the guides can be found on our website [here](#)

The 'more than 50%' criteria

To qualify for NHS Pension Scheme membership an employee must spend **more than 50%** of their actual working pensionable hours on 'NHS Health Care Services' over the Scheme Year, for example from 1 April until 31 March.

Members retiring

If a member is looking to claim their NHS Pension benefits and they are still in active employment a Retirement Benefits Claim Form (AW8) needs to be completed; this can be found on our website [here](#)

An NHS Pension direction / determination may provide access to the NHS Pension Scheme redundancy arrangements, providing the member satisfies the relevant eligibility criteria and you can certify that entitlement to NHS redundancy benefits is provided for in the member's terms and conditions of employment.

If an employee retires and subsequently returns to employment with an NHS Pension direction / determination employer it is unlikely they will be able to continue to contribute to the NHS Pension Scheme upon their return and there is a possibility that their pension benefits will be affected.

More information about retirement can be found [here](#)

Changes

If an NHS Pension direction / determination / New Fair Deal employing authority has any of the following changes occur they should notify NHS Pensions as soon as possible:

- The organisation changes structure or ceases to be the same legal entity it was when the direction was originally issued.
- The organisation changes name.
- The organisation ceases to be party to a qualifying contract meaning the employees cease to satisfy the wholly or mainly condition.

Employer responsibilities

All employers who have access to the NHS Pension Scheme for employees covered by an NHS Pension direction / determination are legally bound to administer the NHS Pension Scheme locally in accordance with statutory pension legislation. The Employers Charter, which provides clarification of your roles and responsibilities, is available on our website [here](#)

If an employer fails to satisfy any of the requirements of the NHS Pension Scheme Regulations, or the NHS Pension direction / determination document, the Secretary of State may terminate access to the NHS Pension Scheme after giving three months written notice

Contacting NHS Pensions

There is a dedicated email address that direction / determination employers can use to contact NHS Pensions for general enquiries

nhsbsa.pensionemployers@nhsbsa.nhs.uk

For queries about the application and joiner process please contact the Scheme Access Team

nhsbsa.schemeaccess@nhs.net

NHS Pensions address is

Scheme Access Team
NHS Pensions
PO Box 2269
Bolton
BL6 9LS

Telephone Number 01253 979600

Employer Helpline (general enquiries) 0300 3301 353
Open 8.00am to 6.00pm Monday to Friday

Member helpline 0300 3301 346
Open 8.00am to 6.00pm Monday to Friday