

## **NHS Pensions**

### **A Guide to applying to become an Independent Provider Employing Authority (IP EA)**

### **Independent Provider Employing Authority access to the NHS Pension Scheme**

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## Overview

The purpose of this guide is to inform Independent Providers on how to become an Independent Provider Employing Authority, including how to access the NHS Pension Scheme and specific rules and regulations that impact them. This guide is provided by NHS Pensions, the administrators of the NHS Pension Scheme. General information regarding the NHS Pension Scheme and administration of the scheme is available on our website.

## What is an Independent Provider?

An Independent Provider, in NHS Pension terms, is an organisation that holds a 'Qualifying Contract' and that, prior to April 2014, would not have qualified as a NHS Pension Scheme Employing Authority (EA) under any access route.

'Qualifying Contracts' are NHS Standard Contract, NHS Standard Sub-Contract, Alternative Provider Medical Services (APMS) Contract and Local Authority Contract.

With effect from 1 April 2014 an organisation that holds any of the above contracts and does not qualify as an Employing Authority under any other access route may now apply, if it so wishes, to become an Independent Provider Employing Authority (IP EA).

## What is an Independent Provider Employing Authority (IP EA)?

An IP EA is an organisation that holds any of the above qualifying contracts and has successfully applied to become an Employing Authority for the NHS Pension Scheme.

## Closed (restricted) or Open NHS Pension Scheme Access

Once an IP has decided to become an Employing Authority it must then decide if it wants Closed (i.e. restricted) access or Open access to the NHS Pension Scheme.

All of the eligible staff who will join the NHS Pension Scheme must fall under just the one chosen access type. There cannot be a mixture.

**Remember that IP access to the NHS Pension Scheme does not relate to staff who are already members of the NHS Pension Scheme under a New Fair Deal/Closed Direction/Determination arrangement.**

**Closed (or restricted) Access is:**

- Only those eligible (working more than 50% of their time) employees who were working in the NHS and were entitled to join the NHS Pension Scheme within (i.e. prior to) 12 months of the IP first becoming an Employing Authority; not as a 'Closed Direction'.

**Or**

- All new eligible employees who were entitled to be a member of the NHS Pension Scheme

at any time in the 12 months before they first started working for the IP.

### **Open Access is:**

- All eligible (working more than 50% of their time) employees. (Please see the 'more than 50%' section for more information about eligible staff)

### **For Both Types of Access**

All NHS Pension Scheme members are Officers. There are no Practitioners. This includes GPs and bank staff employed directly by an IP EA.

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

The IP must state clearly on the application form if it wants Closed or Open access.

For an IP EA that has elected to join the NHS Pension Scheme the pensionable earnings ceiling is 75% of the total sum of all the contracts values. The 75% pensionable earnings ceiling must include the pay of those staff who spend more than 50% of their time on the qualifying contracts and who would have qualified for access (Closed or Open) but who are ineligible to join the NHS Pension Scheme or who have opted out by completing form SD502.

**Important** - Employers are advised to identify those employees who will be eligible for NHS Pension Scheme membership in advance of submitting the application form so that such employees can be enrolled into the NHS Pension Scheme from the relevant effective date if the application is successful. Those applying for Closed access must also remember that the date chosen is likely to affect the number of employees who may be eligible for NHS Pension Scheme membership.

### **Changing or terminating your type of access**

If an IP EA wishes to change from Closed to Open access it must give us three (3) months' notice.

If an IP EA wishes to change from Open to Closed access it must give us and its employees six (6) months' notice.

An IP EA can decide it no longer wants to be an Employing Authority but must give us and its employees at least six (6) months' notice.

If it wishes to become an Employing Authority again at some future date it must complete a fresh application form.

## **How to become an NHS Pension Scheme Employing Authority**

If an IP meets the relevant pension criteria of holding a qualifying contract it is not legally required to become a NHS Pension Scheme IP EA, it has a choice. However, if it does become an IP EA, all qualifying contracts awarded become pensionable and it is bound by statutory pension legislation.

In order to become an Employing Authority an IP must complete an initial application form in full and send it (with supporting evidence) by email to:

[schemeaccess@nhsbsa.nhs.uk](mailto:schemeaccess@nhsbsa.nhs.uk)

**This email address must not be used for routine pension enquiries.**

If an IP would like to password protect the application form then a contact name and telephone number should be provided in the covering email.

The application form can be downloaded from the IP section on our website. Click onto 'Employer Hub' and then click onto 'Access to the NHS Pension Scheme'

An application from an IP to become an Employing Authority can contain a retrospective nominated date (from 1 April 2016), which can be the approval date for IP status in certain circumstances e.g. the IP has paid employer and employee contributions due for the retrospective period and they have satisfied all other requirements throughout that time. We, acting for the Secretary of State, will consider any such requests and confirm the date from which access is to be authorised.

Any incomplete or incorrect forms will be returned and this will potentially delay the date the IP will become an Employing Authority.

With the exception of listing all of the qualifying contracts, much of the information contained on the application form will be estimated by virtue that an IP may not know how many staff it will employ or the actual value of the contracts.

The application form requires an IP to declare the total contract value or estimated value. However, in the event that there are already staff that have access to the NHS Pension Scheme under a Closed Direction and those staff are working on a qualifying contract, the total contract value must be reduced to take account of the Closed Direction staff.

## Application Process

Action	Administered By
Application form and contract evidence	Applicant
IPEA application receipt letter Contract check to ensure qualifying Send out letter to Commissioner of each contract.	Scheme Access Team
Commissioner Letter completion	Head commissioner of each contract (NHS England/Delegated CCG/Welsh Health Board)
Commissioner letter received and checked	Scheme Access Team
Final Actions Allocate EA code Notify applicant if approved/rejected Notify NHS Pensions Finance Team	Scheme Access Team

## Additional Contract Awarded

A revised application form must be completed whenever a qualifying contract starts. This must be submitted **within** fourteen days of any change. Therefore an IP EA could potentially submit several forms during the year.

An IP EA must list all qualifying contracts, including those already approved, on the IP application form on every occasion it is sent to us. This is to monitor the 75% pensionable pay ceiling.

## Extension of an Approved Qualifying Contract

The IPEA should notify the Scheme Access Team as soon as it is aware that an approved contract is being extended past its original expiry date and must send a copy of the new/extension contract as soon as it is available. This will ensure there is no break in access to the NHS Pension Scheme.

## Qualifying Contract Criteria

In order for an IP to become an Employing Authority the contract they hold must be a qualifying contract in accordance with the NHS Pension Scheme Regulations and must be in the name of the IP applying, see extract from the regulations:

“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 NHS Standard Sub-Contract;
- c) an APMS Contract, or
- d) 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;

If the contract you hold does not meet the criteria above then Employing Authority status will not be granted for that contract.

NHS Standard Contracts containing APMS services in Schedule 2L are treated in NHS Pension terms as NHS Standard contracts and not APMS contracts.

Income from any non-qualifying contract can still be pensionable if the staff working on that contract work more than 50% of their time on another approved qualifying contract.

We must be made aware of and approve any qualifying contract before it becomes pensionable in the NHS Pension Scheme.

## **Sub-Contracting**

With effect from 1 April 2017, an organisation which holds an NHS Standard Sub-Contract for the provision of clinical services can also apply for IP EA status in the NHS Pension Scheme. Such access can only be considered in circumstances where the holder of the main NHS Standard contract is an Employing Authority in the NHS Pension Scheme and employs at least one member of staff.

## **The ‘more than 50%’ criteria**

To qualify for NHS Pension Scheme membership an IP employee must spend **more than 50%** of their actual working pensionable hours on ‘Qualifying contract’ work over the Scheme Year, i.e. from the 1 April until the 31 March.

Hours worked in excess of the whole time working week are overtime in NHS Pension terms and are therefore not pensionable. They must therefore be excluded when determining the more than 50% criteria. However any additional hours worked by a part time employee up to the whole time working week are pensionable and do count towards the more than 50% criteria.

If an employee’s working pattern changes and they no longer spend more than 50% of their time on ‘Qualifying contract’ work they are no longer eligible for NHS Pension Scheme

membership. Their NHS Pension Scheme membership must cease immediately. There is no 'grace' period.

If an employee has more than one contract of employment with the same employer, for example they work on two contracts and have an employment contract for each, then each contract of employment is treated separately.

1 Contract of Employment for 37.5 hours, working on 2 contracts	Time Spent in Hours	Percentage of Whole Time	Pensionable
Contract 1 - Qualifying Contract	22.5	60%	Yes
Contract 2 - Non-Qualifying Contract	15	40%	Yes

1 Contract of Employment for 37.5 hours, working on 2 contracts	Time Spent in Hours	Percentage of Whole Time	Pensionable
Contract 1 - Qualifying Contract	15	40%	No
Contract 2 - Non-Qualifying Contract	22.5	60%	No

2 Contracts of Employment	Time Spent in hours	Percentage of Whole Time	Pensionable
Contract 1 for 15 hours - Qualifying Contract	15	100%	Yes
Contract 2 for 22.5 hours - Non-Qualifying Contract	22.5	100%	No

**At the end of every pension year an IP must complete a certificate listing, amongst other things, details of every employee who they have admitted to the NHS Pension Scheme and also summarising those who met the more than 50% criteria but did not join the NHS Pension Scheme.**

## **Part Time Contracts**

Caution must be applied when an IP EA employs staff on an irregular hours basis as there is a possibility they could be put in the NHS Pension Scheme on the first day of employment and it later transpires they do not satisfy the more than 50% criteria.

## The 75% Pensionable Pay Ceiling

There is a maximum amount of **total** NHS pensionable income that can be declared by an IP EA in a specific pension year. This is known as the pensionable pay ceiling or threshold. An IP EA must estimate its pensionable pay bill prior to the start of the pension year. This ceiling is unique to IPs.

### **The pensionable pay ceiling is 75% of the total of the contract value(s).**

For example if an IP held NHS Standard/APMS contracts to the total value of £1,000,000.00 in a pension year the pensionable pay ceiling would be £750,000.00. This figure excludes employer contributions.

The pensionable pay estimate must include the pensionable income of all NHS Pension Scheme members **and** also the hypothetical pensionable pay of those employees who meet the more than 50% criteria but who are not scheme members. Where an IP offers Closed (i.e. restricted) NHS Pension Scheme access the number of pensionable and non-pensionable staff captured within the estimate will be less than if the IP offers Open NHS Pension Scheme access.

### **The pensionable pay estimate must include the pay of ‘the more than 50% staff’ who are not NHS Pension Scheme members.**

The 75% threshold is a ceiling; it does not mean that 75% must actually be achieved. If the total pensionable pay bill does not reach the 75% limit an IP cannot put other non-eligible staff in the NHS Pension Scheme until the threshold/ceiling is achieved.

## Exceeding the ceiling

If the 75% ceiling is exceeded the IP EA must, in law, pay a surcharge. The surcharge is 12% of the pensionable pay in excess of the threshold.

For example:

Total contract value(s) is £1,000,000.00

Pensionable pay threshold is £750,000.00 ( $£1,000,000.00 \times 75\%$ )

Actual declared pensionable pay is £800,000.00

Excess is £50,000.00 ( $£800,000.00$  less  $£750,000.00$ )

Surcharge/levy is £6,000.00 ( $£50,000.00 \times 12\%$ )

The surcharge (or levy) must be paid within one calendar month of the invoice from us. If it is not paid on time the IP shall be subject to a statutory interest and administration charge.

If an IP EA continues to exceed the 75% threshold it may result in its status as a NHS Pension Scheme Employing Authority being terminated even if it has paid the surcharges.

An IP that ceases to be an Employing Authority must provide alternative 'in house' pension arrangements.

**The NHS pensionable pay of the employees and their pensions won't be affected (i.e. cut back) if the IP exceeds the threshold.**

## **Contribution Guarantees**

We **may** require an IP EA to provide a Contribution Guarantee.

The Contribution Guarantee must guarantee a payment of a sum of money equal to between 100% and 110% of 3/12ths of a reasonable estimate of the IP's total annual contributions liability. This contribution liability includes all NHS Pension Scheme contributions: employer, employee, Added Years and Additional Pension contributions.

Whilst an IP must proactively calculate the guaranteed sum if there is any question as to the amount we shall determine it.

There are three different types of Contribution Guarantee:

1. A letter of credit/bank guarantee
2. A parent company guarantee
3. A security over bank account guarantee.

IPs may choose any of the three different forms of guarantee, subject to proper completion. They may also mix and match guarantee types if they wish. For example a letter of credit/bank guarantee for their initial cover and a security over bank account guarantee for any 'top-ups' subsequently required.

The statutory NHS Pension Scheme Regulations state that the format of the guarantee is determined solely by us meaning that an IP cannot come up with their own version.

If we have asked the IPEA to provide a Contribution Guarantee it must be reviewed by the IPEA in each of the circumstances listed:

- No later than one month prior to the start of each Scheme year
- No later than one month after that date when it was first granted Employing Authority status
- No later than one month prior to when the Contribution Guarantee is set to end; i.e. if it has an eight month lifespan it must be reviewed by the end of the seventh month
- If it becomes a party to a new qualifying contract
- If it believes that its estimated contribution liability has increased, or may increase, by more than 10%
- Where we have considered that the sum guaranteed is not enough.

Where there is a change to the sum guaranteed this must be processed within fourteen days

**Or**

Where the IP has internally reviewed the guaranteed sum and there is no change it must proactively notify us within 14 days.

If an IP fails to comply with the rules regarding the Contribution Guarantee it may be removed from the NHS Pension Scheme resulting in it having to offer its employees an alternative pension scheme.

## **IP EAs Additional Responsibilities**

All IP EAs are legally bound to administer the Scheme in accordance with statutory pension legislation. IP EAs are obliged to offer the NHS Pension Scheme to all of their eligible (more than 50%) employed staff.

An IP EA is legally required to:

- Complete an initial IP EA application/declaration form
- Notify us whenever a new qualifying contract(s) is awarded. This must be done by completing a revised IP EA application/declaration form.
- Notify us whenever NHS contracts cease, are novated or a variation is issued.
- Identify those staff who meet the more than 50% (wholly or mainly) criteria and make them aware of their pension rights by providing such staff with a copy of the Member Guide relevant to their section of the Scheme in accordance with Disclosure of Information obligations and the NHS Pension Scheme Employer Charter. Copies of the Member Guides can be obtained from our Website at [www.nhsbsa.nhs.uk/nhs-pensions](http://www.nhsbsa.nhs.uk/nhs-pensions) It is also recommended that employers record when such information has been supplied to members and how it has been distributed in case of any dispute at a later date.
- Complete an end of year IP Certificate on time.
- Give prior notice if they elect to cease to be a NHS Pension Scheme Employing Authority
- Give prior notice if they wish to change IP EA Scheme Access type
- Stay within the 75% pensionable earnings ceiling on an annual basis

## **Contacting Us**

There is a dedicated email address that IP EAs can use to contact us for general enquiries [nhsbsa.pensionemployers@nhsbsa.nhs.uk](mailto:nhsbsa.pensionemployers@nhsbsa.nhs.uk)

For queries about the application and joiner process please contact the Scheme Access Team [schemeaccess@nhsbsa.nhs.uk](mailto:schemeaccess@nhsbsa.nhs.uk)

NHS Pensions address is

NHS Pensions  
PO Box 2269  
Bolton  
BL6 9JS

### **Telephone Numbers:**

Scheme Access Team: 01253 774546

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

Member helpline: 0300 3301 346 or 0191 279 0571  
Open 8.00am to 6.00pm Monday to Friday

Pensions Online: technical enquiries 0870 011 7108

### **Frequently Asked Questions (FAQs)**

The FAQs cover some, but not all of the questions that may be asked.

If a question has not been covered contact:

[nhsbsa.pensionemployers@nhsbsa.nhs.uk](mailto:nhsbsa.pensionemployers@nhsbsa.nhs.uk) (general enquiries)

[schemeaccess@nhsbsa.nhs.uk](mailto:schemeaccess@nhsbsa.nhs.uk) (scheme access enquiries)

stating clearly, you are an Independent Provider.

### **NHS Pension Scheme Membership**

**Q. Are all IP employees who are NHS Pension Scheme members regarded as Officers in NHS pension terms?**

A. Yes. This includes GPs and bank staff employed directly by an IP.

**Q. Can freelance self-employed GP locums superannuate their IP EA income?**

A. No, they cannot superannuate any IP EA income including APMS. However a locum can join the Scheme if the IP EA formally employs them and they meet the more than 50% criteria. They would be regarded as an Officer.

**Q. I am currently a member of the NHS Pension Scheme by virtue of being employed by a 'classic' (i.e. healthcare professional led) APMS Contractor however I am**

**seconded to an associated (i.e. parent) company that does not (prior to April 2014) have access to the NHS Pension Scheme. Can I remain in the Scheme?**

A. If before 31 March 2017 the staff are under a secondment agreement (that is not a Retention of Employment Contract) they will **not** be able to remain in the NHS Pension Scheme from 01 April 2017 without the employer applying and being approved for IP EA status or Classic APMS status, or if the staff are TUPE transferred to the employer and a Direction/Determination has been approved by the Secretary of State.

**Q. Are IP employees covered by the NHS Injury Benefits Scheme?**

A. No.

**Q. Can an IP EA lose its NHS Pension Scheme Employing Authority status?**

A. Yes. If it acts in breach of statutory pension legislation or fails to cooperate with NHS Pensions in respect of administering the NHSPS it may cease to be an Employing Authority. We will (after consulting the Department of Health) give the IP due notice in writing.

**Q. Can an IP EA cease to be an EA on a voluntary basis?**

A. Yes, however it must give its employees and us six months' notice.

**Q. Is the Contribution Guarantee mandatory?**

A. No, it is at our discretion.

### **Existing Employing Authorities holding NHS Standard/APMS contracts**

**Q. With the admission of IPs to the NHS Pension Scheme, does this mean that potentially all APMS Contractors now have access?**

A. Yes. However there are different pension rules with regards to 'classic' (i.e. healthcare professional led) APMS Contractors that have had access to the NHS Pension Scheme since April 2004.

**Q. Does an existing Trust have to apply to become an IP Employing Authority if, from April 2014, it enters into a Standard, APMS, or Local Authority contract?**

A. No. A Trust can offer the NHS Pension Scheme to every employee so long as they are eligible under normal rules; i.e. under 75 or not in whole time pensionable employment elsewhere. The Trust is not bound by the IP pension rules outlined in this Guide.

**Q. Does an existing (GMS/PMS) GP Practice have to apply to become an IP Employing Authority if it enters into an NHS Standard or a Local Authority contract?**

A. Where a (GMS/PMS) GP Practice enters into a NHS Standard contract it does not need to apply to become an IP Employing Authority; it can simply offer the NHS Pension Scheme to all salaried staff so long as they are eligible. The GPs must superannuate the NHS Standard contract income.

Where a GMS/PMS practice enters into a Local Authority contract it needs to complete an Independent Provider Application.

**Q. Why is the contract value reduced if an organisation is an existing New Fair Deal (NFD) Closed Direction or normal Closed Direction body?**

A. The contract value must be reviewed if there are staff that are already in the NHS Pension Scheme (through the Closed Direction route) and they are working on a NHS Standard or APMS contract otherwise the contract value and the pensionable earnings ceiling would be overstated.

**Q. Does an existing APMS Classic contractor, that is already an NHS Pension Scheme Employing Authority, have to apply to become an IP Employing Authority if it enters into a NHS Standard contract or further APMS contracts?**

A. Where an existing ('Classic') APMS contractor Employing Authority enters into an NHS Standard contract from 01/04/2016 it does not need to apply to become an IP Employing Authority; it can simply offer the NHS Pension Scheme to all salaried staff so long as they are eligible and the pre-existing APMS contract remains intact. The GPs must superannuate NHS Standard contract income.

Where an existing ('Classic') APMS contractor Employing Authority enters into a new APMS contract it must apply to become another ('classic') APMS Employing Authority in accordance with Classic APMS Pension Rules and Regulations.

**Q. Does an existing Out Of Hours Provider (OOHP) Employing Authority have to apply to become an IP Employing Authority if it enters into a Standard, APMS, or Local Authority contract?**

A. No. An OOHP Employing Authority can offer the NHS Pension Scheme to every salaried employee so long as they are eligible. The OOHP is not bound by the IP pension rules outlined in this Guide.

Any GPs engaged by the OOHP under a contract for services (i.e. self-employed) must superannuate all their income. Salaried employees the OOHP receive via a TUPE that were eligible to contribute to the NHS Pension Scheme with the previous employer (excluding IP EAs) must complete a Direction Application to maintain their eligibility to the scheme following any future TUPES.

**Q. Does an existing Closed Direction body have to apply to become an IP Employing Authority if it enters into a Standard, APMS, or Local Authority contract?**

A. No, this is voluntary access but any new starters will be unable to contribute to the NHS Pension Scheme. This is because access to the NHS Pension Scheme as a Closed Direction body is restricted to those employees listed on the Direction order. Once established also as an IP Employing Authority it would result in the organisation being both a Closed Direction and an IP Employing Authority in NHS Pension terms; each with its own unique rules and EA code.

**Q. Does an existing New Fair Deal (NFD) Closed Direction body have to apply to become an IP Employing Authority if it enters into a Standard, APMS, or Local Authority contract?**

A. No, this is voluntary access but any new starters will be unable to contribute to the NHS Pension Scheme. This is because access to the NHS Pension Scheme is restricted to those employees listed on the NFD Direction order. By applying to be an IP Employing Authority would result in the organisation being both a NFD Closed Direction and an IP Employing Authority, each with its own unique rules and EA code.

**Q. Can a Federation/Consortium apply to become an IP EA?**

Federation/Consortiums can apply to become an IP Employing Authority but only staff that are employed directly by the Federation/Consortium are eligible to contribute to the NHS Pension Scheme.