

## **NHS Pension Direction Factsheet**

### **Fair Deal for Staff Pensions**

This factsheet has been produced following the HM Treasury announcement of 7 October 2013 regarding the extension of the 'Fair Deal for Staff Pensions' (the extension is commonly referred to as New Fair Deal).

The extension allows staff who are compulsorily transferred from the NHS to be offered continued access to the NHS Pensions Scheme rather than being offered a broadly comparable private pension scheme. In broad terms, all staff whose employment is compulsorily transferred from the public sector under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain access to their current employer's pension arrangements.

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

#### **1. What is an NHS Pensions Direction?**

A direction is a legal document drafted under powers conferred within Section 7 of the Superannuation (Miscellaneous Provisions) Act 1967, under which the Secretary of State approves, subject to certain restrictions, the payment of contributions by people employed outside the National Health Service.

#### **2. How does an employer apply for a NHS Pensions Direction under New Fair Deal?**

To make an application an employer will need to supply answers to the questions in the Application form document found on the NHS Pensions website. Employers should then send the forms and supporting documentation by post or by email to the address on the application form.

#### **3. How long does the application process take?**

It can take up to 3 months from the date the application is received by NHS Pensions (Fleetwood), however NHS Pensions aim to provide a response within 6 weeks.

NHS Pensions are required to refer each application to the Department of Health who act on behalf of the Secretary of State in such matters.

If a direction is granted the employer will receive a copy of the official direction which should be read carefully in conjunction with the main NHS Pension Scheme Regulations.

#### **4. Who can contribute to the NHS Pensions Scheme under a NHS Pension Direction?**

A direction authorised in respect of New Fair Deal will be a 'closed' document i.e. it will be restricted to those staff listed in the official direction document, who are the subject of the relevant transfer and who comply with the terms of the Direction and the main NHS Pension Scheme Regulations.

This includes a duty on the employer to report any changes in employees' eligibility to contribute to the NHS Pension Scheme e.g. where the employee ceases to be wholly or mainly employed in the delivery of NHS services or the function which transferred.

The whole-time or part-time Employees named in a NHS Pensions Direction under new Fair Deal will be eligible for NHS Pension Scheme provided their minimum engagement time on the transferred NHS function amounts to more than 50% of their employed time for that direction employer.

This 'more than 50% condition' does not have to be met on any one day or week but must be met overall in respect of any complete scheme year. Where employment with the direction employer is for less than a scheme year, the 'more than 50% condition' must be met overall in respect of the part year.

Employees named in a NHS Pensions Direction who cease work on the transferred NHS function, but move to other NHS work for that employer, can also remain eligible for the NHS Pension Scheme on the above basis.

#### **5. Are Employers with a NHS Pensions Direction required to offer access to the NHS Pensions Scheme to all eligible members of staff?**

Yes - NHS Pension Direction Employers should enrol all eligible staff into the NHS Pensions Scheme with effect from the date of transfer. In addition, HMT guidance requires details of the persons listed in the Direction and updates and amendments to those details as set out in HMT guidance including:

- the number of transferred staff that are enrolled in a public service pension scheme on the day that their new employment commences;
- the number of employees covered by the NHS Pension Direction on the anniversary of the contract being awarded and at the end of the contract;
- the contributions (employer and employee) paid in respect of these employees; and
- details of employers that have failed to meet their responsibilities as employers in the schemes.

#### **6. From what date are employer & employee contributions payable?**

Contributions are payable with effect from the date of the transfer to the NHS Pension Direction employer.

#### **7. Can an employee who is currently contributing to the NHS Pensions Scheme under a direction opt-out of the scheme?**

An eligible employee can opt-out of the NHS Pensions Scheme if they wish; further guidance regarding opting out can be viewed on our website.

#### **8. Can the same employee subsequently opt back into the NHS Pensions Scheme?**

The employee can subsequently opt back into the NHS Pensions Scheme (providing they continue to satisfy the criteria detailed above and in the direction document).

#### **9. What status do direction employees attract in the NHS Pensions Scheme?**

All eligible employees who contribute to the NHS Pension Scheme by virtue of a NHS Pension Direction will attract officer status for pension purposes and be subject to the NHS Pensions Scheme regulations, which can be viewed on our website.

#### **10. Does an Employer with an NHS Pensions Direction need to notify NHS Pensions of any changes to / within their organisation?**

Yes; e.g. they should immediately notify NHS Pensions if any of the following occur:

- a) The organisation changes structure / ceases to be the same legal entity it was when the direction was originally authorised

b) The organisation changes name

**11. Can a NHS Pension Direction employee retain special class status (SCS) / Mental Health Officer (MHO) status under the terms of the direction?**

A NHS Pension Direction employee can retain SCS / MHO status providing they continue to satisfy the relevant criteria. Further guidance regarding SCS / MHO status and the relevant criteria can be viewed on the website.

**12. Does an Employer with a NHS Pensions Direction have to apply for an additional direction each time they are to receive a compulsory transfer of staff from the NHS?**

As NHS Pension Directions under New Fair Deal are 'closed' directions, each time they are to receive a compulsory transfer of staff from the NHS they need to apply for an additional direction which will have the named individuals included in the new compulsory transfer.

**13. If an employee retires and subsequently returns to employment with a NHS Pension Direction Employer will pension benefits be affected e.g. could they be reduced (abated)?**

Pension benefits may be affected. More information and worked examples can be found in the Retirement booklet available on the website.

**14. If an employee retires and subsequently returns to employment with a NHS Pension Direction Employer can they rejoin the NHS Pensions Scheme?**

No, an employee cannot rejoin the NHS Pensions Scheme if they return to employment with a NHS Pension Direction Employer

**15. If an employee is seeking specific information about their membership of the NHS Pensions Scheme (e.g. an estimate of pension benefits); how can they obtain such information**

An employer / employee can make such a request by completing the [online enquiry form](#).