

# Section 96 and 122 Agreements 2019/20 PAACCS

Explanatory paper for Commissioners and Practices on the s96 and s112 agreements in relation to the 2019/20 Pensions Annual Allowance Compensation Charge Policy and Scheme (2019/20 PAACCS)

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# Overview

This paper describes the 2019/20 Pensions Annual Allowance Compensation Charge Policy and the 2019/20 Pensions Annual Allowance Compensation Charge Scheme (2019/20 PAACCS) which some clinicians, including those working in primary care, can benefit from when they retire. It also describes an approach to accounting for these payments that we require primary care GP and dental practices to use, if they believe they have clinicians who have worked for them in 2019/20 who will benefit from the scheme. There may be no need to account for these payments, a practice's accountant and auditor will be able to advise on this matter. However, if there is, adhering to the requirements set out in the s96 agreement for GP practices and the s112 agreement for Dental practices will ensure that the payments are accounted for in the right way with no additional tax implications for clinicians or the practice that they worked in.

## Introduction

1. In Autumn 2019/20 NHS England took exceptional action to try to tackle an issue that was contributing to winter pressures and reducing the willingness of clinical staff to take on additional work. The issue was that of pension tax, and in particular pensions annual allowance tax charges for those clinicians accruing more each year in their NHS Pension than their annual tax-free allowance.
2. Most people have an annual tax-free allowance of £40,000, but very high earners may have a lower annual allowance. Pension tax charges had been raised repeatedly as one of the main reasons why clinicians were becoming less willing to do overtime or commit to additional sessions, and this could be observed in time-series employment data.
3. To help address this problem, pending wider changes to the pension taxation system, it was agreed for one year only to develop an approach to providing compensation in retirement for any pensions annual allowance tax charges incurred in 2019/20.

4. The policy developed to address this is known as the 2019/20 Pensions Annual Allowance Charge Compensation Policy, and the Scheme which delivers the policy is known as the 2019/20 Pensions Annual Allowance Charge Compensation Scheme, or 2019/20 PAACCS for short. The Policy requires eligible clinicians to use the Scheme Pays facility of the NHS Pension Scheme to meet their 2019/20 Annual Allowance charges as they occur. This means that the NHS Pension Scheme effectively loans money to the clinicians which reduces their pension (and if applicable lump sum) at retirement.
5. The Scheme will provide eligible clinicians with monthly pension payments (and a lump sum payment for members of the 1997 NHS Pension Scheme). These payments will as closely as possible, mirror the deductions that would result from using Scheme Pays for 2019/20.
6. It was agreed that the 2019/20 PAACCS would be offered to all clinicians delivering services to NHS patients whose employer was an Employing Authority of the NHS Pension Scheme, and to clinicians who have been working in Primary Care during 2019/20 and who met the eligibility criteria:
  - Members of the NHS Pension Scheme during 2019/20
  - Working in a clinical role during 2019/20 which required professional registration
  - incurring an Annual Allowance charge for 2019/20 as a result of their NHS Pension Contributions.

## 2019/20 PAACCS and Primary Care

7. The 2019/20 PAACCS has two categories of membership:
  - **Category 1** being clinicians that are members of the NHS Pension Scheme with a contract of employment with an employer responsible for making contributions to the NHS Pension Scheme.
  - **Category 2** being self-employed primary care clinicians, such as GP and dental partners, that are members of the NHS Pension Scheme (i.e. Contract Holders).

8. Due to the legal structure of PAACCS, the way in which PAACCS benefits will be provided will be different for the two categories of clinicians, albeit the benefits due for all members will be the same. The 2019/20 PAACCS can be offered to those eligible clinicians working in Primary Care using the powers contained in sections 96 and 112 of the National Health Service Act 2006 which enables assistance and support to be provided.
9. The purpose of this paper is to explain how payments will be made to Category 2 members and the resulting need for an agreement between NHS England and Contract Holders under sections 96 and 112 to allow NHS England to fund these benefits.
10. We have agreed that we should provide practices with Section 96 or Section 112 agreements so that they are clear what their obligations are around the reporting of any financial assistance provided in relation to this scheme.

## 2019/20 PAACCS benefits

11. 2019/20 PAACCS benefits are calculated based on an individual's 2019/20 Scheme Pays charge(s) in the NHS Pension Scheme. Payments from the 2019/20 PAACCS will be paid as a lifetime pension with, if applicable, an at-retirement lump sum payment (for 1995 section members only).
12. As part of the normal NHS Pension Scheme retirement process, NHSBSA will calculate the Scheme Pays deductions relating to the 2019/20 tax year. NHSBSA will then use these deductions as the starting point to calculate the member's final PAACCS benefits.

## Payment of 2019/20 PAACCS benefits to Category 2 clinicians

13. For Category 2 clinicians, financing for the PAACCS benefit payments will be deemed to be made to Contract Holders (such as GP and Dental Practices) as financial assistance under sections 96 or 112 of the National Health Service Act

2006 on the proviso that such assistance will be used to make the required 2019/20 PAACCS payments to eligible clinicians.

14. In practice, payments will be funded by NHS England upon the retirement of an eligible clinician and paid directly to affected members as Miscellaneous Income on behalf of Contract Holders, with NHSBSA acting as payment agent on behalf of the Contract Holder in making the payment direct to the eligible clinician. This practical approach minimises administration required of Contract Holders and ensures that no additional transactional costs are incurred in the payment being made.
15. Basic rate tax (currently 20%) is deducted from payments made as Miscellaneous Income at source, with any additional tax obligations made by individual clinicians through self-assessment. **For the avoidance of doubt, Contract Holders will not need to make PAACCS payments to eligible clinicians.**
16. However, in order for NHS England to make Financial Assistance payments under the NHS Act 2006 in relation to these benefits, as set out above, an agreement is needed between NHS England and Contract Holders.
17. The documentation provided alongside this explanatory paper provides more detail on this agreement (the Section 96 and 112 agreements and accompanying guidance), however, a main part of this is a requirement for Contract Holders to account for the PAACCS in a specific way, as summarised below.

## Contract Holder accounting treatment for Category 2 2019/20 PAACCS payments

18. Organisations such as GP Practices and Dental Practices with eligible clinicians classified as self-employed (i.e. Category 2 clinicians) will need, if seen as material by their accountants, to make an allowance for the payment of 2019/20 PAACCS benefits (and financial assistance receipts relating to them) in their accounts.
19. It is NHS England's expectation (following discussions with HMRC) that the payment of benefits and the funding for this from NHS England will be categorised

as expenditure and income at the point that payments are made to beneficiaries, and therefore, that this will be neutral when measuring profits in any one year.

20. A guidance note for practices provides further information. Payments to beneficiaries by NHSBSA on behalf of these organisations will be made as “Miscellaneous Income” and will not be classified as profit disbursements.
21. It is important that Contract Holders adhere to the accounting treatment set out above as it underpins HMRC’s tax analysis of Category 2 benefit payments.

## Need for a section 96 or 112 agreement

22. As a result of the legal mechanism used to provide PAACCS benefits to category 2 members, and for NHS England to fund them, a Section 96 or Section 112 agreement is required between Contract Holders and NHS England. This will enable NHS England to make available funding for the PAACCS benefits to be paid, and for NHS England, Contract Holders, beneficiaries and NHSBSA to abide by the guidance provided by HMRC on taxing these payments.

## Contract Holders also employing Category 1 clinicians

23. NHS England acknowledges that some Contract Holders may directly employ primary care clinicians will be classified as Category 1 eligible clinicians, too.
24. In these cases, the Contract Holder practice is providing the contractual commitment for access to the PAACCS. Therefore, if GP and Dental practices employ Category 1 clinicians that have applied for the 2019/20 PAACCS, a notional reserve for the future payment of these benefits and an equal and offsetting reserve for future financial assistance receipts may need to be made in your accounts, if material. This should be discussed with your accountant/auditor. As for Category 2 clinicians, Category 1 clinicians will in practice be paid directly as set out above.

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