



# National Tariff Consultation Process 2015/16

## Outline of the tariff statutory consultation process

### Introduction

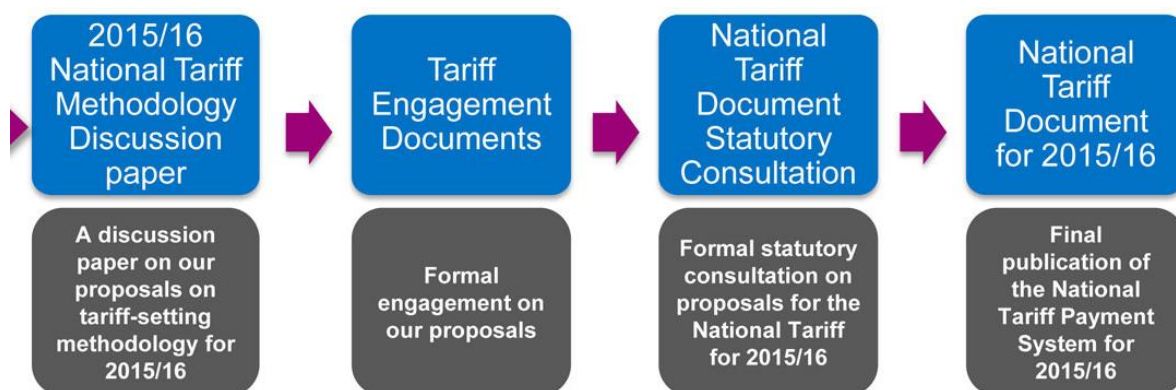
Following the implementation of the Health and Social Care Act 2012, Monitor and NHS England have responsibility for the payment mechanism for the NHS in England. Previously the process and guidance documents were the responsibility of the Department of Health's Payment by Results (PBR) team and were not subject to a statutory process. However, with the enactment of the 2012 Act, the process and the documents themselves are now subject to a process set out in law.

This information note sets out the stages of the process, the documents made available, the relevant legislation and the involvement the HFMA at each stage.

### Timeline

#### Four stages

Monitor with the involvement of NHS England, works to a four stage process for the development and publication of the national tariff<sup>1</sup> document as set out in the following diagram<sup>2</sup>:



The stages, timing, documents (their statutory basis) and the way in which the HFMA responds at each stage is set out in the table below:

<sup>1</sup> The Health and Social Care Act 2012 requires the document to be called the 'national tariff'

<sup>2</sup> *Developing the NHS Payment System*, Monitor and NHS England, February 2014

Stage	Month	Documents Released	Statutory Basis	HFMA Response
National Tariff Methodology	April/May	Discussion documents that aim to set out key changes in the method for setting national prices for the coming financial year	Not applicable	Completion of on-line response form with views of National Payments Systems Group (NPS SIG) members
National Tariff Engagement	July	Tariff engagement documents including draft national prices	Not applicable	Full consultation response collating views of NPS SIG and other HFMA stakeholders
Statutory Consultation	October/November	Proposed national tariff document for the coming year including proposed final prices	Section 118 of the Health and Social Care Act 2012	Not applicable (see below for more details)
Publication of the National Tariff	December/January	Final national tariff document for the coming financial year	Section 116 of the Health and Social Care Act 2012	None required

### *Sense check and road test*

The former Department process routinely involved both sense check (with a limited number of organisations) and road test exercises. Taking place in August/September and December respectively, these provided the opportunity for NHS providers to work through prices and identify any anomalies or where perverse clinical incentives may result. The results were reviewed and considered by the PBR team and any appropriate changes were made prior to the publication of the final PBR package in February.

Under the new framework, there is no equivalent process; the tariff engagement documents released in the summer provide the first opportunity for the service to consider the proposed prices alongside the methodology used to derive them. Proposed final prices are published alongside the statutory consultation notice. Although issues with individual prices or the resulting financial impact for individual organisations or local health economies can be raised with Monitor, they do not form part of the statutory consultation process and need not be taken into account. See below for more details.

## **Statutory Consultation**

### **Period and nature of consultation**

Section 118(13) requires a statutory consultation period of 28 days beginning the day after the notice is published. This is supported by an objection process (section 120 of the 2012 Act). The objection process relates to the methodology used to derive the prices, *not the prices themselves*<sup>3</sup>. The 'method' is the data, methodology and calculations used to arrive at the proposed national prices. It excludes national variations to national prices for example,

<sup>3</sup> *Fair and Transparent Prices for NHS Services*, Department of Health, March 2013

the market forces factor. Therefore if individual organisations anticipate a significant financial impact as a result of the proposed prices, they can only object to the way in which the prices were determined, not a price or the resulting impact. Details of the objection process is published alongside the consultation (or section 118) notice.

## **Objection process**

As part of the consultation notice, Monitor publishes the process for organisations to object to the methodology used to determine the proposed national prices for the coming year.

### *Who can object?*

Only clinical commissioning groups (CCGs) and 'relevant providers' can raise an objection.

Relevant providers include:

- Holders of the Monitor provider licence
- Other relevant providers<sup>4</sup> i.e. providers providing an NHS service subject to a proposed national price; NHS (non-foundation) trusts are included here.

Monitor's subsequent actions are dependent on the number of commissioners and providers that raise a formal objection.

### *Objection thresholds*

The objection thresholds are as follows and the fulfilment of *any one* can trigger the reconsideration of the proposed national tariff:

- 51% of CCGs
- 51% of 'relevant providers'
- The percentage share of tariff income received by objectors for the specified<sup>5</sup> financial year is greater than, or equal to, 51% of total tariff income for that year.

### *The outcome*

If sufficient providers and/or commissioners object, Monitor must either reconsider the proposed methodology and re-consult on revised proposals, or refer the proposed methodology to the Competition and Markets Authority for a decision on whether it is appropriate. The Authority makes a determination within 30, or if there are good reasons, up to 50, working days. If it is appropriate, the national tariff is published. If it is not appropriate, Monitor must make changes to the methodology, having regard to the Competition and Markets Authority's reasons. The Authority has a power of veto over the proposed changes (section 123).

---

<sup>4</sup> National Health Service (Licensing and Pricing) Regulations 2013

<sup>5</sup> 1 April 2012 to 31 March 2013 for the 2014/15 national tariff