

NHS Pension Scheme: proposed amendments to scheme regulations

Introduction

NHS Employers welcomes the opportunity to respond to the above consultation on behalf of employers across the NHS. We have engaged with employers and our response represents the views and feedback gathered from workforce leaders in response to the consultation questions, including insight into the impact of the proposals on workforce capacity within NHS organisations.

Executive summary

Our response to the consultation supports the proposals to introduce new retirement flexibilities, as we believe this will help to retain highly valuable and experienced colleagues. We have shared some practical suggestions about how the new retirement flexibilities could be implemented and administered in a way that is simple and efficient for both employers and scheme members.

We support the proposed changes to ensure rapidly rising inflation is not included in annual allowance calculations. The changes will mean fewer NHS staff are affected by the annual allowance and will reduce the impact on those who are affected. In turn, this should support workforce capacity, retention and service delivery. However, we feel that the impact of this change in isolation will be small, and we strongly believe more significant scheme reform is needed to ease the impact pension tax is having on NHS care, and to ensure the NHS Pension Scheme remains attractive and valuable to the whole NHS workforce.

Consultation questions

[Q1. Do you agree or disagree that the new retirement flexibilities should be introduced as proposed in this consultation document?](#)

Pensionable re-employment

Employers agree with the proposal to introduce pensionable re-employment for members of the 1995 Section. We have shared some practical suggestions for how we feel pensionable re-employment should be implemented and administered.

Retention

The proposal allows employers to provide a more valuable reward offer for experienced staff who wish to remain or return to the NHS workforce. We believe that allowing staff who have taken their benefits from the 1995 Section to join the 2015 Scheme and build up further pension, will make returning to, or remaining in NHS employment more attractive. This will support the retention of valuable experienced staff who have the skills and knowledge to help improve capacity and service delivery. Staff retention is critically important given employers are still managing the pressures of elective service recovery following the COVID-19 pandemic. Those choosing to work for longer can pass their skills and knowledge onto colleagues, aiding succession planning and helping to ensure high-level continuity of care for patients.

Financial wellbeing

The majority of members in the 1995 Section have a normal pension age of 60, although some members may take their pension without reduction from age 55. Members who are currently approaching normal pension age will not be able to access their state pension until the age of 67. The introduction of pensionable re-employment may help some members to bridge the financial gap between claiming NHS Pension Scheme benefits and claiming the state pension.

Staff will now have the opportunity to claim their 1995 Section benefits, continue to work and build up benefits in the 2015 Scheme for a number of years. The option to continue to increase their NHS pension substantially may encourage more staff to return to NHS employment and continue working past their retirement age.

Fairness

Employers told us that it is difficult to explain why it is not currently possible for 1995 Section members to join the NHS Pension Scheme when other retired members can. Currently, employers can only offer membership to an alternative scheme, such as NEST, which does not provide a comparable value of benefits.

The introduction of pensionable re-employment for 1995 Section members will improve fairness across the NHS Pension Scheme, as members of the 2008 Section and 2015 Scheme may already take their benefits and join the 2015 Scheme upon returning to the NHS.

Administration processes

We spoke to pension and payroll managers to understand their views on how pensionable re-employment should be implemented and administered. Employers were keen to ensure that the administration processes are simple, efficient and carried out consistently by all employers.

The joining process

Employers identified that the process for joining the 2015 Scheme will need to be appropriate for members in the following five main groups:

- a) Employees who retired and returned to the NHS before 1 April 2023 and chose not to join a pension scheme.
- b) Employees who retired and returned to the NHS before 1 April 2023 and are contributing to an alternative scheme, such as NEST.
- c) Individuals who retired before 1 April 2023 and have not yet returned to NHS employment, but may do so in future.
- d) Employees who intend to retire and return on or after 1 April 2023.
- e) Employees who intend to take partial retirement on or after the proposals are implemented.

There is a strong preference for contractually enrolling all 1995 Section pensioners back into the 2015 Scheme. This would remove the need for staff to re-join via application, and is preferred over using automatic enrolment, which takes place every three years and may not cover all staff, for example, those who are over state pension age or with earnings below £10,000.

Contractual enrolment would be the most efficient method and would reduce administrative work, both locally and centrally. This method is more likely to increase NHS Pension

Scheme membership and would have a stronger retention impact. Employees will of course have the option to opt out of the 2015 Scheme should they not wish to join.

For groups a and b, we feel that contractual enrolment should take place on 1 April 2023. For groups c and d, we feel that it is appropriate for contractual enrolment to take place on the first day of re-employment and for group e we feel that this should take place on the day after their first drawdown.

In relation to group b, employers need to ensure they do not pay employer contributions into NEST and the NHS Pension Scheme on behalf of the same employee. Ideally, membership of NEST would be terminated from the day before contractual enrolment in the NHS Pension Scheme takes place. Some employers asked if it would be lawful to move an employee from one scheme to another without permission. We would appreciate assurance on this legal point, should the joining process be implemented as described.

Employers will also need to be mindful that some employees may be receiving additional payments through employer contribution recycling schemes. Internal processes need to be in place to ensure payments are stopped if an individual joins the 2015 Scheme.

We understand that there will be no option to backdate pensionable re-employment for those who retired from the 1995 Section quite some time ago. This has been largely welcomed by employers on the basis of the cost of backdated contributions. However, some employers questioned if there was a risk of unequal treatment here, based on the date of retirement, which could be linked to age.

Financial considerations

Some employers raised concerns that an increase in membership at an individual employer level, arising as a consequence of 1995 Section members being eligible to build up additional pension benefits, may create a cost pressure.

Partial retirement

Employers agree with the proposal to introduce partial retirement for members of the 1995 Section. We have shared some practical suggestions for how we feel partial retirement should be implemented and administered.

Retention

The ability to drawdown pension benefits while continuing to work will allow staff to retire gradually and work flexibly for longer. This will enable employers to help staff adjust their working patterns while remaining financially secure, helping to improve work life balance. This in turn could help improve staff health and wellbeing, reduce sickness absence and the risk of burn out, whilst supporting retention and staffing levels over time.

Partial retirement allows staff to continue in their role without interruption, providing consistency that supports workforce planning and continuity of care for patients. It removes the need for teams to cover vacancies, helping to alleviate unnecessary pressure.

Partial retirement offers a more seamless approach, as staff will not have to leave NHS employment to take their benefits. Employers report that the current retire and return procedure, combined with the requirement to meet the 16-hour rule, can be complex and slow, and may act as a disincentive for some staff to return. As an individual can take partial retirement whilst continuing in employment, there is no need to issue a new employment contract, there is less administration, and so overall, the process is simpler and will provide a better experience for staff, helping to support retention.

The implementation of the McCloud remedy means that some NHS employees may be able to retire earlier than they originally planned. Employers have concerns about the impact of the McCloud remedy on retention and capacity and, therefore, the introduction of partial retirement as a new tool to support the retention of experienced staff is welcome and well-timed.

Rewarding and recognising our long serving staff

Removing the need for a break in employment means that 1995 Section members can remain on their existing contract terms and retain the benefits of their long service. This further strengthens the reward offer and acknowledges the valuable service staff have accrued over their NHS career.

Employers highlighted that, where an individual takes partial retirement, their clinical excellence award will continue. This is another way of rewarding and recognising the contributions of high performing senior clinicians and is likely to encourage staff to stay in the NHS for longer. A potential drawback is that, by continuing to pay clinical excellence awards for longer serving clinicians, there is less funding available to recognise the contribution of those earlier in their careers.

Where there is no break in continuous employment, an individual's right to certain statutory benefits, such as statutory redundancy payments and the right to claim unfair dismissal, will continue. Our guidance for employers states that, where an employer wishes to achieve a break in continuous service, there should be a two week break between taking benefits and returning to work. In the context of using partial retirement as a tool to retain skilled and experienced staff, employers may feel that achieving a break in continuous service is unnecessary and the risks of claims for redundancy or unfair dismissal are fairly low.

Fairness

The introduction of partial retirement for 1995 Section members will improve fairness across the NHS Pension Scheme, as members of the 2008 Section and 2015 Scheme may already choose to drawdown their pension benefits and continue to work in their current role.

Employers have advised that the current difference is difficult to justify and that 1995 Section members often show frustration that they are unable to access the same flexible retirement options.

The flexibility to withdraw up to 100 per cent of benefits in one or two drawdown payments provides more choice for 1995 Section members than the current terms available to them via retire and return. The change will allow members to manage their finances and plan ahead in the lead up to full retirement. Expanding the drawdown range to up to 100 per cent for all members promotes fairness and increases flexibility.

Managing pension tax

Partial retirement may help some NHS employees to manage their pension tax position by crystallising some or all of their benefits in order to control future pension growth. This could enable senior staff who are affected by pension tax to remain in the NHS Pension Scheme and in NHS employment. Partial retirement could be promoted by employers as a way of helping staff facing pension tax issues locally, to support retention of senior clinicians and increase capacity. However, members would need to seek financial advice on their individual situation to understand if this would be beneficial for them. Reducing the number of high earners opting out of the NHS Pension Scheme is important to ensure that the required

contribution yield is collected, which ensures the financial stability of the scheme and the required employer contribution at future valuations.

Any measures that allow employers to support staff facing pension tax issues are welcome. However, we believe that greater scheme reform is needed to ensure senior clinicians and managers can continue to do the additional work that is required. We address the need for further scheme reform in the next section on the proposed changes to the regulations around inflation.

Administration considerations

We spoke to pension and payroll managers to understand their views on how partial retirement should be implemented and administered.

Drawdown application process

Employers told us that the current administration process for drawdown in the 2015 Scheme and 2008 Section is entirely manual and time consuming. The number of drawdown applications is currently very small, but employers expect partial retirement requests to increase substantially if the proposals are implemented.

It will not be feasible for employers to process a large volume of partial retirement applications using the current manual processes. A fully automated application process for partial retirements must be in place before the proposals are implemented. Employers will need training and guidance on how to process applications for partial retirement. We believe that without adequate training and automated processes, there is a serious risk that the aims of this policy will not be achieved.

Employers suggested having a partial retirement application form that is separate to the current AW8 retirement benefits claim form and that can be submitted electronically via Pensions Online. Employers told us that adding partial retirement options to the existing AW8 form would make it too long and complex for employees and employers to complete accurately.

Modelling tools

Currently, all quotes for partial retirement must be requested by members from NHS BSA. Employers would benefit from being able to provide partial retirement quotes locally to support conversations with staff about staying in work. In order to promote partial retirement, and increase the take up, employers have requested a modelling tool to help employees to understand their options with illustrative figures.

It may also be helpful to create a tool for members to be able to carry out very early speculative enquiries independently, before contacting their employer for further advice if needed.

Employers believe partial retirement information and modelling should be developed as a priority for inclusion in the My Pension app.

Employers told us that members frequently ask if they can take their automatic lump sum from the 1995 Section and continue working. Worked examples to show how this could be achieved using partial retirement would be helpful.

Employers said that some of the complexity around partial retirement comes from having to take into account benefits from other sections. It would be helpful if members could choose to take some or all of their 1995 pension benefits without needing to look across to the value

of benefits in other sections, or to have guidance on how to make this part of the process simpler.

Cost implications for employers

Members who retire later than age 60 cause a cost saving for the scheme. However, if the average retirement age falls, this will create a cost pressure for employers. While employers agree with the introduction of partial retirement for 1995 Section benefits, they expressed concerns that this will trigger higher employer costs which have not previously been funded. In the absence of fully costed options, employers would like to understand the quantum of these costs and how they would be paid for.

Reduction in pensionable pay considerations

In order to access drawdown, members will need to reduce their pensionable pay by at least 10 per cent for 12 months. Some employers have concerns that this may be seen as an unnecessary barrier for staff choosing to access their benefits and this could impact the popularity of partial retirement and limit the improvements to capacity that could be achieved. However, employers could consider a range of options to increase the level of non-pensionable pay. Other employers feel that staff nearing the end of their careers are likely to want to reduce their hours in the lead up to retirement and that a 10 per cent reduction will be achieved naturally in most cases.

ESR functionality

Employers believe the way that ESR is currently configured will make it difficult to implement the required reduction in pensionable pay. ESR automatically assumes all hours worked, up to full time hours, are pensionable, including ad hoc additional hours. Employers would welcome guidance on how to process the required reduction in pensionable pay via ESR.

Communication

Clear communications will be important to both staff and employers to ensure the successful implementation and take up of any changes to the NHS Pension Scheme.

Clear communications for scheme members are critical so that flexible retirement options, both existing and new, are understood. Targeted communications for different staff groups will need to be considered.

Employers will need clear guidance on how to implement and administer the new retirement flexibilities. It is important that employers are given sufficient notice of the changes to prevent unnecessary pressure on administration teams, aid workforce planning and allow time for effective conversations with staff about their retirement options.

Removing the 16-hour rule

Employers strongly agree with the proposal to permanently remove the 16-hour rule from 1 April 2023.

The rule has been suspended since 25 March 2020 to help the NHS deal with the impact of the COVID-19 pandemic. The suspension allowed retired and partially retired staff to return to work in the NHS or increase their working commitments without impacting their pension. Removing this rule would continue to help employers to maximise workforce capacity, and promote continuity of care, which will positively impact service quality. Its removal would also eliminate the associated administrative burden for both employers and the NHS BSA.

Employers are in agreement that the original rationale behind the 16-hour rule is outdated, as flexible retirement patterns are now being actively encouraged, and that the scheme regulations should support staff to work longer wherever possible.

The 16-hour rule is not applicable to 2008 Section or 2015 Scheme members. Its removal promotes fairness across the NHS Pension Scheme membership and provides more flexibility to 1995 Section members.

[Q2. Do you agree or disagree that the changes to the pension rules regarding inflation should be implemented as proposed in this consultation document?](#)

We support the proposed changes to ensure rapidly rising inflation is not included in annual allowance calculations. However, we feel that the impact of this change in isolation will be small, and we strongly believe more significant scheme reform is needed to ease the detrimental impact that pension tax is having on NHS care, and to ensure the NHS Pension Scheme remains attractive and valuable to the whole NHS workforce.

Employers across the NHS are deeply concerned about the effect of pension taxation, and the impact it is having on NHS care, including meeting the government's ambitions to tackle the treatment backlogs.

For a number of years, NHS staff who are affected by pension taxation have taken steps to manage their tax position by leaving the NHS Pension Scheme, retiring early, reducing their working hours, or not taking on additional work.

A large teaching hospital recently shared some data with us which shows the impact of pension taxation on their organisation:

- 18 per cent of their consultants have already reduced their programmed activities (PAs) due to pension taxation.
- A total of 143 PAs have already been dropped, which is equivalent to 14 full time consultants.
- Just under a third of their consultants said they plan to drop their programmed activities at the next job planning round due to pension taxation.
- 54 per cent of their consultants had reduced their additional activities due to pension taxation.

In the current environment of high inflation, more NHS staff will be affected by pension taxation and the detrimental impact on workforce capacity and service delivery will continue to grow. This is partly due to rapidly increasing inflation being included in annual allowance calculations, which the proposal aims to solve. However, the value of tax free pension growth that an individual can accumulate is also falling in real terms as the annual allowance and lifetime allowance limits remain frozen and fail to keep up with inflation.

We support the proposal to move the date on which 2015 Scheme benefits are revalued in line with inflation from 1 April to 6 April, from 6 April 2023. This will ensure the same CPI figure is used to uplift both the opening and closing value used in annual allowance calculations. This effectively means that only pension growth after inflation is tested against the annual allowance. We believe this is in line with the principle that pension growth which is solely due to inflation should not count towards the annual allowance. Our support for this proposal is based on there being no unintended consequences for other members of the scheme.

The proposed changes will mean that fewer NHS staff will be affected by the annual allowance and will reduce the impact on those who are affected. Any measure that supports those affected by pension tax and in turn, capacity and retention, is welcome. However, we believe the proposed change in isolation will only have a small impact on retention and capacity and further significant scheme reform is needed.

We believe that the following additional measures are needed to significantly improve retention and capacity.

1. Aggregate pension growth across the 1995/2008 Scheme and the 2015 Scheme, including any negative Pension Input Amounts.

Although the two NHS Pension Schemes are separately registered for tax purposes, they are treated as connected under the Public Service Pensions Act 2013 for other purposes, such as the actuarial valuation.

Where pension growth in the 1995/2008 Scheme is effectively negative (due to inflation being higher than increases in salary), pension growth is assumed to be zero and so this negative growth is not recognised. We believe pension growth, including any negative Pension Input Amounts, should be aggregated across both schemes.

We believe that negative Pension Input Amounts in previous tax years should be recognised in the carry forward provisions and should be used to offset against pension growth in later tax years.

By not aggregating pension growth and not recognising negative pension growth, pension growth in respect of NHS employment is being overstated for tax purposes.

2. Provide targeted financial education, guidance and advice.

The NHS Pension Scheme and the interaction with the annual and lifetime allowances is complex and that complexity is mounting due to the implementation of the McCloud remedy. We believe that the provision of financial education, guidance and where necessary, independent financial advice, will help members to understand their individual circumstances and make better informed decisions about their future scheme membership, working patterns and retirement plans.

3. Introduce flexible accrual rates to allow members of the NHS Pension Scheme to control the amount of pension they build up and the amount they contribute in return.

Employers need to attract and retain staff across the whole workforce to provide quality patient care, and so the NHS Pension Scheme needs to be attractive and valuable to all NHS employees, across all pay grades and professions.

Membership levels are lowest at the higher and lower ends of the pay scales. This is due to higher earners choosing to leave the scheme due to pension taxation and those on lower incomes feeling unable to afford the cost of membership.

Allowing higher earners to choose to pay a lower contribution in return for a lower proportion of benefits, would enable employees to manage their pension tax position without needing to change their working patterns. Similarly, this would provide a more affordable solution for lower earners to manage their current financial priorities, whilst saving for their future, albeit at a lower level.

NHS Employers would strongly support the introduction of flexible accrual rates to increase the accessibility and value of the NHS Pension Scheme for all members of the workforce.

Q3. Do you agree or disagree that changes to scheme access should be introduced as proposed in this consultation document?

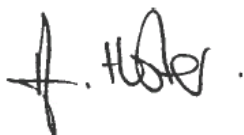
Workforce leaders were generally supportive of the proposals but did not share any detailed or opposing views on this issue with us.

Q4. Do you agree or disagree that the technical updates to member contributions provisions should be implemented as proposed in this consultation document?

Employers were supportive of the changes, but felt further changes to the contribution structure are required, including the introduction of flexible accrual as described above, to ensure the scheme is attractive and valuable for all staff.

Please contact us if you have any questions or if you require any further detail on any of the points in our response. We look forward to seeing the government response as soon as practicable.

Yours Sincerely,



Andrea Hester

Deputy Director of Employment Relations and Reward, NHS Employers.