NHS Employers

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NHS Pensions Policy Team
Department of Health
Room 2W09
Quarry House
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RE: ‘The draft National Health Service Pension Scheme (amendment) Regulations (2014)’.

Thank you for the opportunity to comment on the above consultation. NHS Employers would like to respond to the consultation in our position as the voice of workforce leaders in the NHS.

Please find our response attached.

Yours Sincerely,

A. Hester.

Andrea Hester
Head of Pensions & Reward

**Response to the Department of Health's (DH) consultation on 'The draft National Health Service Pension Scheme (amendment) Regulations (2014)'.**

**Submitted by NHS Employers**

## Introduction

The NHS Employers organisation welcomes this opportunity to provide its views on the Department of Health consultation and would like to respond to the following sections:

1. **Scheme access for Independent Providers of NHS clinical services.**
2. **Increase to employee contributions from April 2014.**

In forming our response NHS Employers have consulted with management side representatives of the NHS Pension Scheme Governance Group, the NHS Pension Schemes Independent Actuary, Human Resource Directors, Payroll and Pensions Managers. In addition NHS Employers conducted a survey at the National Pension Managers Forum which has regional representatives from across England and Wales.

## 1. Scheme access for Independent Providers of NHS clinical services.

Although independent providers are not the primary audience for NHS Employers, we acknowledge that the introduction of the following four measures will impact existing NHS employers alongside new independent providers:

- *Existing powers allowing consideration of a contribution guarantee 'bond' for certain employers who fail to pay their scheme contributions during NHSPS membership will be strengthened. NHS Pensions will in future be able to consider the use of a bond for employers with a previous history of non-payment.*

  **Response:** We do not believe this will affect a large number of existing NHS organisations as we are not aware of any existing problems with regular non-payments of scheme contributions. We support the strengthening of this power on the basis that it helps to create a stronger scheme for both employers and members.

- *Administration charges and interest will be introduced for NHSPS employers who pay their scheme contributions late. However, employers will not pay any interest or administration charges if they pay their scheme contributions by the existing due dates, e.g. the 19th day of the month following deduction, for regular employee and employer contributions.*

  **Response:** We do not feel this will affect existing NHS organisations as we are not aware of any existing problems with the late payment of contributions. We support the introduction of this measure on the basis that it will help to create a stronger scheme for both employers and members.

- *For members of the NHSPS 1995 section final salary arrangement only, employers will be charged for the cost of pension benefits (but not death benefits) calculated on any pay increases they make, which are greater than a new 'cap' equal to the level of the consumer prices index (CPI) + 4.5%. The employer charge will apply to 'over cap' increases in one or more of the final 3 years prior to retirement. Member benefits will continue to be calculated on full, 'uncapped' pay.*

  **Response:** NHS Employers supports the implementation of new powers to ensure that the NHS Pension scheme remains fair for all members. However some employers have raised concerns with regards to the level of the proposed 'cap' (CPI + 4.5%) and with regards to situations where pensionable pay increases are significantly outside of the employers control. The following examples illustrate situations that would result in a charge under the new provision that we feel should be taken into consideration before universal application of the new provision.

  **Example 1 – Salary sacrifice arrangement**

  A member has a salary sacrifice arrangement for a lease car, who then ceases this arrangement, returning the vehicle in their penultimate year to retirement. The salary sacrifice was in the region of £280 per month which reduced pensionable pay by £3,360 per year. The member was an Agenda for Change Band and 4 earning circa £22,000 per year, the equivalent of Agenda for Change Pay Point 17 or the maximum point on a Band 4. Therefore, the ending of a salary sacrifice arrangement would represent an increase in 15% of their pensionable pay.

  This is higher than the proposed CPI + 4.5%. The salary sacrifice as a proportion to pensionable pay would also be much higher for a part-time worker, a full-time worker earning below band 4 or a more expensive lease car arrangement.

  In this example, the increase in employee pay would not be a pay increase that the employer was responsible for, nor that they have any control over. We would request that examples in this instance were excluded from the proposed cap.

  **Example 2 – Change in working pattern**

  A nurse moves from working clinics to working on a ward and would therefore typically work night shifts every three weeks. This would result in their pensionable pay increasing by around 10% in unsociable hour's payments. We do not consider that this situation should be covered by the new cap and consideration of this situation should be given by NHS Pensions, when reviewing final salaries.

**Example 3 – Pay awards outside of the employers control**

A member of medical staff receives a pay rise from their employer (which does not exceed the cost cap). That member of staff then receives a Clinical Excellence Award from the Advisory Committee on Clinical Excellence Awards (ACCEA) which would exceed the cap.

We feel this situation could be relatively common and clearly outside of the employers' control. Our understanding is that the ACCEA has agreed that in principle that in these they would pay the charge in these situations. If this is the case we would like for this to be shared formally and communicated to employers.

**Example 4 – Senior manager/Executive pay**

We have received feedback from employers on two areas which may particularly be relevant to breaking of the cost cap. Firstly, it can be a relatively common scenario that when a member of a board leaves the organisation, such as the chief executive, another member of the board can be asked to 'step-up' into the role on an interim basis while a replacement is sought. In this circumstance the pay award that accompanies the stepping up is likely to break the employer cost cap. Having to pay a charge due to this is potentially unpalatable when maintaining the stability of an organisation would be paramount.

Secondly, an employer cited an example of a trust merging with two other trusts. Following this, the board applied the principles of job evaluation to their roles and due to the increased responsibility of managing a larger trust, awarded appropriate pay increases, which have passed the cap threshold. In their view, mergers between NHS trusts due to national level reform has become more commonplace and should be considered in context of this new charge.

In a period of financial austerity employers rightly need to consider the impact of unnecessary expenditure. In all these examples, employers may therefore find themselves in difficult circumstances when making decisions relating to pay increases and promotions, particularly for older members of staff and will need to carefully consider what any potential outcome may be.

## 2. Increase to employee contributions from 1 April 2014

NHS Employers welcomes, in this consultation paper, that the Department has adopted our proposal for employee pension contribution rates to be implemented with effect from 1 April 2014. NHS Employers recognises that this is a particularly demanding time for employers with changes to the existing NHS Pension Scheme and the imminent introduction of a new scheme in April 2015. However, it is acknowledged that the increases to employee pension contribution rates form part of a government requirement (2010 Spending Review) to deliver savings equivalent to a 3.2 percentage point increase above 2011/12 levels by 2014/15.

NHS Employers has worked with Department of Health and staff side colleagues, through the NHS Pension Scheme Governance Group, to consider the impact of contributions increases on opt out levels over the past two years. The manpower opt out trend data supplied to the Governance Group by the Department's Workforce Data Analysis Team includes the impact of Auto Enrolment thus disguising the identification of any potential scheme opt-outs following the introduction of Year 2 contribution increases. NHS Employers is not aware that the Governance Group has received any evidence to suggest that scheme opt-outs have increased as a result of employee contribution rate increases.
Within the service there is a *perception* that these increases will significantly reduce take home pay at a time of below inflation pay rises. Some employers feel that this final year of increases is *perceived* as having a large impact on member's ability to pay due to recent changes in child benefit, changes to the annual and lifetime allowances, below inflation pay rises and significant increases in the cost of public transport.

NHS Employers requests that the Department of Health gives further consideration to its earlier proposals (in response to DH's years 1 and 2 consultations) that the full-time equivalent pensionable pay bands should be reviewed and updated annually to reflect any pay award increases and changes in the Government tax regime. Thus maintaining the principle of progressivity of contribution rates for both gross pay and net of tax relief.
Quite properly, DH's proposal recognises uplifts for Agenda for Change pay award increases in determining employee contribution rates from 1st April 2014. However, without also taking account of changes to the tax regime, exceptions to progressivity of employee contribution rates net of tax relief could be introduced as the illustration below demonstrates.

ILLUSTRATIVE EXAMPLE: The threshold between tiers 4 and 5 is proposed by DH as £49,472 (Agenda for Change pay point 39) with a potential further uplift to reflect an Agenda for Change pay increase from 1st April 2014 (which would not be actioned as a change to the regulations until July 2014.). The personal tax allowance for 2014/15 will be £10,000 and the basic rate taxable band will be from £0 - £31,865. This means that someone will pay 40% tax on taxable earnings over £41,865.

The move from contribution tier 4 to 5 (where the contribution rate increases from 9.3% to 12.5% on the proposed year 3 rates) had been set at Agenda for Change pay point 39 in 2010/11 and at that time reflected the move from being a basic rate (20%) taxpayer to being a higher rate (40%) taxpayer. The natural place to revise the tier 4 to tier 5 threshold is at £47,846 – which is calculated by linking the point at which someone starts to pay tax at 40% (i.e. £41,865) to pensionable pay net of contributions (i.e. £41,865 ÷ [1 – 12.5%]) = £47,846). It is recognised that revising the tier 4 to tier 5 threshold to £47,846 destroys this particular link to an Agenda for Change pay point with the nearest pay point being pay point 38 at £47,088 as at 1st April 2013. Employees whose pensionable earnings fall between £49,472 and £47,846 may well therefore pay pension contributions net of tax relief of 5.58%, which is less than an employee with pensionable earnings of £25,000.

There are likely to be other anomalies to progressivity of contribution rates net of tax relief e.g. at the threshold for income limit for personal allowance and the additional tax rate threshold which an annual review of the associated impact of the tax regime would reveal.

NHS Employers confirms its support for the Department of Health to set out salary and pensionable earnings bands and corresponding employee contribution rates in regulations in line with its consultation proposals for 2014-15. However we would also request that the Department gives further consideration to NHS Employers earlier proposals (in response to DH's years 1 and 2 consultations) that the full-time equivalent pensionable pay bands should be reviewed annually to consider the impact of the Government tax regime (particularly where there are changes) and action changes to tiers/thresholds if Department of Health judges there to be an undesirable and material impact on maintaining the principle of progressivity of contribution rates for both gross pay and net of tax relief.

NHS Employers
7 February 2014