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NHS Pension Scheme: proposed amendments to continue the suspension of restrictions on return to work

NHS Employers welcomes the opportunity to respond to the above consultation on behalf of employers across the NHS. Our response represents the views and feedback gathered from workforce leaders to set out the context in which employers are currently operating, before specifically addressing the consultation questions.

Context

NHS organisations continue to experience significant workforce challenges. The Covid-19 pandemic has increased the pressure on NHS services both in terms of its response to the pandemic, and the emerging longer-term pressures relating to elective service recovery. In addition to this, NHS organisations are faced with an increasingly difficult challenge of staffing their services, which is expected to be exacerbated further in the upcoming winter months.

Employers are therefore clear that the need to maximise workforce capacity to deliver NHS services will undoubtedly continue beyond 31 October 2022. NHS organisations are using every available measure to retain existing staff and to encourage retired staff to return to the workforce to support the service, and employers have reinforced the need for national initiatives to enable them to fully benefit from the additional capacity that these skilled individuals can provide.

Although this consultation specifically relates to extending temporary easements around abatement and the 16-hour rule for the NHS Pension Scheme, employers would strongly urge the government to consider other measures outside of the scope of this consultation that could be made available to support workforce capacity challenges, such as:

- The introduction of new options in the 1995 Section of the NHS Pension Scheme, such as partial retirement and pensionable re-employment. This would help facilitate flexible retirement, support members to work in the NHS for longer, and to help employers to maximise the capacity of their workforce.

- The introduction of flexible accrual rates for the NHS Pension Scheme to allow scheme members to control the amount of pension they are building up. This would increase the accessibility of the scheme to all members of the NHS workforce, and would therefore support recruitment and retention objectives that are crucial to maximising workforce capacity.
- Amending the way in which pension tax is calculated to allow pension growth across both NHS Pension Schemes to be aggregated, and to ensure that pension growth that is solely caused by rapidly increasing inflation is not tested against the annual allowance. This is currently preventing many senior members of the NHS workforce from carrying out the additional work that is desperately needed to tackle the elective backlog.

Q1. Do you agree or disagree that the temporary pension easements should continue beyond the planned expiry on 31 October 2022?

The vast majority of employers agree that the temporary pension easements should continue beyond 31 October 2022 for the purposes of continuing to support workforce capacity and service delivery. However, from a practical perspective, the lack of notice given for this potential extension of arrangements is unhelpful, and could limit the effectiveness of the policy.

Most employers that provided feedback were fully supportive of an extension to the current arrangements, with the positive impacts on workforce capacity being the primary reason behind this.

The temporary suspension of abatement and the 16-hour rule has been hugely beneficial throughout the pandemic. The easements have helped to support incredibly valuable and experienced colleagues to return to work with higher weekly hours than would otherwise have been possible. Employers have reported that this has directly improved workforce capacity and their ability to deliver services at a critical time.

Employers have been able to retain the skills and experience of these individuals, as well as their ability to encourage, support, mentor and train younger colleagues. Employers have provided anecdotal evidence that many individuals that have retired and returned to work have indicated that they plan to leave the NHS workforce completely if and when the easements are lifted.

Although the numbers affected by the suspension of these rules may be relatively small, employers have provided us with a number of specific examples where services would not have been able to continue were the easements not in place. A prominent example is of midwifery services across the NHS; many midwives have special class status (SCS), with a significant proportion of this staff group being above age 50. The temporary easements since March 2020 have enabled many organisations to continue running their midwifery services, retaining vital knowledge and experience, and helping to train and mentor early career midwives.

With the workforce pressures as they are expected to be in the coming months, losing any individuals from the workforce, or seeing a reduction in the hours they are able to work, would further increase the difficulties faced by NHS organisations to safely staff services – including essential vaccination programmes and virtual wards over winter - and to support staff in terms of health and wellbeing and flexible working opportunities.

For the small number of employers that did not fully support continuing to suspend the temporary easements, three main concerns were highlighted:

- Another extension of the current arrangements at late notice is likely to create confusion and uncertainty, and is potentially too late for many staff that have already planned their retirements for November 2022. Employers are currently informing staff wanting to retire that the currently suspended rules will be re-introduced from 1 November.
- Another extension could perhaps set a precedent that the rules will continue to be suspended indefinitely, which will only make the messaging around the re-introduction of the rules more difficult.
- Concern was raised around the fairness of continuing to suspend abatement rules for those with SCS and Mental Health Officer (MHO) status, as the ability to retire with an unreduced pension at aged 55 is an unearned benefit that is not available to the rest of the workforce.

Although these concerns have been raised, it is worth re-iterating that the vast majority of employers would support the extension of these easements beyond 31 October 2022.

It has been extremely frustrating for employers that these proposals have been published with so little notice before the expected re-introduction of the rules. Many organisations have already had 1:1s with staff about changing their working patterns, entered into formal agreements about changes to job plans and have planned recruitment activities to fill the gaps that were anticipated. When responding to the proposals to extend the easements beyond 24 March 2022, we strongly stressed the importance of having sufficient notice for future changes of this kind, and it is therefore disappointing that a similar situation has re-occurred.

Q2. Do you agree or disagree that the continuation of the easements until 31 March 2023 is a reasonable length of time?

Employers had mixed views on whether extending the suspension of the abatement rules to 31 March 2022 was a reasonable length of time. Employers would support the permanent removal of the 16-hour rule.

16-hour rule

Employers would strongly support the continued suspension of the 16-hour rule until it can be removed permanently.

Removing this rule would help employers to maximise workforce capacity, and would promote continuity of care, which can have a positive impact on service quality. It would also remove 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.

Abatement

We note from the consultation document that the government does not have any plans to permanently remove the abatement rules from the NHS Pension Scheme, and have therefore inferred that the current abatement easements are definitely time-limited. Based on this, most employers agreed that 31 March 2023 would not be an unreasonable end date for these measures, but that a later end date would be even more preferable.

For those in agreement that 31 March 2023 was an appropriate end date, it was highlighted that this would enable the NHS to maximise its workforce capacity over the winter period, which is a current priority for employers. There are also potentially advantages to the rules being re-introduced to coincide with the new 2023-24 financial year.

However, many employers would consider it appropriate to have an even longer time before abatement is re-introduced. A longer time period for the extension – at least 12 months but potentially even longer – would provide more certainty for both employers and staff, and would ensure that the NHS had sufficient opportunity to recover from the 2022-23 winter.

Employers are clear that staffing challenges will not have subsided by March 2023, and keeping abatement rules suspended beyond 31 March 2023 would give organisations a more reasonable opportunity to address the following before the rules were re-introduced:

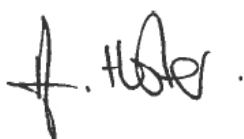
- creating more attractive roles for staff that retire and return
- recovering waiting list backlogs associated with the pandemic recovery
- working on reducing sickness absence rates.

It has already been noted that the government has indicated that it has no plans to permanently remove the abatement rules. Although removing the rules could be seen as an ideal outcome from a workforce capacity perspective, NHS Employers has contributed to a review of these rules as part of the Scheme Advisory Board for the NHS Pension Scheme (England and Wales), and we understand that there are a number of potentially significant considerations beyond workforce capacity that would need to be factored in to any such decision.

To summarise, whilst some employers consider 31 March 2023 to be an appropriate end date for the suspension of abatement rules, many would prefer the rules to be suspended for a longer period, along with certainty as to when the rules will be re-introduced.

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.