

NHS Pension Scheme: proposed amendments to scheme regulations

NHS Providers response

About NHS Providers

NHS Providers is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS trusts and foundation trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate. NHS Providers has all trusts in England in voluntary membership, collectively accounting for £104bn of annual expenditure and employing more than 1.2 million staff.

Our submission

Our submission provides a view on each question set out in the [consultation document](#) as it relates to NHS trusts and foundation trusts. As such, we have not provided an answer to question four, as it concerns practitioner rather than officer members of the NHS Pension Scheme.

Yellow highlight denotes our choice of the given options set out for each question. For questions where we have felt unable to select from the given options, there is no yellow highlight, and we have explained why in our comments.

Key messages

- With the NHS working flat out to reduce the care backlog while facing huge workforce and budgetary constraints, it isn't tenable for senior NHS staff to be disincentivised to work. In addition, the NHS Pension Scheme is reliant on higher earners paying in. When they do not, in large enough numbers, the stability of the scheme as a whole is threatened.
- While the proposals in this consultation will go some way to mitigating the effects of issues for higher earners in the NHS Pension Scheme, the fact remains that while the scheme has been frequently amended and addressed, these small shifts aren't resolving the core issue of annual allowance taxation for senior doctors, managers and other clinicians.

- As an interim solution (alongside expanding access to partial retirement, removing abatement, and introducing LRF to the 1995 section), government could increase the annual and lifetime allowance caps from the levels they have been reduced to and are now frozen at until 2026.
- For a sustainable solution, government should work with stakeholders to create a simpler system which follows the basic rules of a progressive marginal tax system and does not financially penalise hardworking staff for continuing to work in the NHS.
- While overall fairness is considered in the specific proposals of this consultation, which will impact higher earners in the NHS, we remain concerned about the lack of flexibility regarding pension contribution rates for lower-paid staff. We would welcome exploration of the possibility to introduce flexible levels of contribution to the NHS Pension Scheme for all staff.
- We welcome the headline proposals on new retirement flexibilities outlined in this consultation but have some specific concerns around pensionable reemployment and partial retirement, which we would like to see addressed before implementation. These are:
 - We would like to see late retirement factors (LRF) introduced for the 1995 section to actively incentivise these staff members to continue working past 60 if they wish to.
 - We would like to see the removal of the proposed requirement for a 10% reduction in pensionable pay in order for 1995 section members to take partial retirement.
 - We ask that abatement for SCS members and MHOs until the age of 60 is permanently removed. We also ask for permanent removal of the proposed abatement for 1995 section members whose pensionable pay increases to more than 90% of what it was before their partial retirement, and the permanent removal of drawdown abatement for members of the 2008 section and 2015 scheme.
 - If permanent removal of abatement is not possible at this time, we ask that abatement is suspended until 31 March 2025, when 1995 section SCS abatement suspension will also expire. This will provide the time and opportunity to analyse whether the implementation of flexibilities proposed in this consultation is having the intended effect with regards to workforce retention (and consequently increased capacity). In January 2025, a consultation could then be run on whether to resume abatement, continue suspension of abatement, or permanently remove abatement.
- We agree with the proposal to align the timing of the CPI rate that is used to revalue accrued benefits in the NHS Pension Scheme, and the CPI rate that is allowed for in annual allowance (AA) tax calculations. However, we are concerned that there may be transitional issues with this change in the short term, impacting staff who may be planning to retire this financial year. We ask DHSC to consider this potential impact before implementation and provide an appropriate protection scheme as needed.

- As a point of principle, we are supportive of any proposal which ensures that the NHS Pension Scheme is accessible to anyone who is eligible for it.
- While the consultation document references consideration of ethnicity in the implementation of the proposals as they currently stand, we suggest adding explicit consideration of the ethnicity pay gap in the same way that the document considers the gender pay gap.

Question 1

Do you agree or disagree that the new retirement flexibilities should be introduced as proposed in this consultation document?

- agree
- disagree
- don't know

If your response is 'disagree' or 'don't know', please explain why.

The consultation document proposes new retirement flexibilities in relation to:

- pensionable reemployment
- partial retirement
- allowing 100% drawdown in the 2008 section and 2015 scheme
- correcting regulation 86(3) in the 2015 scheme
- removing the 16-hour rule
- removing regulation R4(8) from the 1995 Section.

We welcome the headline proposals but have some specific concerns around pensionable reemployment and partial retirement, which we would like to see addressed before implementation. It is for this reason that we have not answered agree, disagree, or don't know for this question, as we agree subject to specific amends regarding abatement. Our answer to question one discusses each of the listed proposals in turn and sets out suggested amends to our concerns.

Pensionable reemployment

The proposal to allow 1995 section members who retire and draw their benefits to then return to work and build further pension in the 2015 scheme, is welcome. Currently, 1995 section members cannot build benefits under the 2015 scheme after drawing their 1995 section pension, meaning that any salary earned through re-employment in the NHS is non-pensionable for this staff group. The 1995 section is also not subject to Late Retirement Factors (LRF), meaning that any unclaimed benefits from

the 1995 section do not increase in value after the normal pension age for the section (60 years old, unless a member with special class status), indirectly incentivising most 1995 section members to retire at the age of 60.

Enabling 1995 section members to build pension under the 2015 scheme when reemployed after previously retiring provides a partial solution to the lack of LRF in the section, reducing the indirect incentive to retire completely at the age of 60. We agree with the consultation's assumption that it will also make a return to work after retirement more attractive as earnings will contribute towards an additional pension pot under the 2015 scheme. Ideally, however, we would also like to see LRF introduced for the 1995 section to actively incentivise these staff members to continue working past 60 if they wish to. This approach would be more reflective of current trends towards gradual, rather than "cliff edge," retirement among the NHS workforce.

Similarly, the proposal to allow members who are currently non-pensionable in the 1995 and 2008 sections (because they have breached the maximum service limits) to join the 2015 scheme, is welcome. In the absence of removing or raising maximum service limits, allowing affected staff to join the 2015 scheme is a sensible partial remedy.

This section of the consultation document notes that after the suspension of their abatement ends on 31 March 2025, "members with special class status (SCS) would still be subject to abatement until age 60 under normal circumstances. This would mean that their pension is reduced if their pension plus salary after returning to work exceeds their pre-retirement income." We have noted in our [submissions](#) to recent consultations on temporary pension flexibilities that we are particularly supportive of suspended abatement for SCS members including Mental Health Officers (SCS and MHOs), in light of the increased demand for mental health services and significant mental health workforce shortages. Our members have told us that this suspension has been helpful in bringing senior staff back into the workforce, and we therefore ask that abatement for SCS members and MHOs until the age of 60 is permanently removed. There is precedent for this within the document, as it states in a later section that DHSC is proposing to permanently remove the 16-hour rule, which has been suspended in the same manner as SCS and MHO abatement since March 2020.

Partial retirement

We welcome the proposal to allow 1995 section members to partially retire and claim up to 100% of their 1995 section benefits while continuing to work and accrue further pension in the 2015 scheme. It is a sensible remedy to the increase in earlier retirements for staff aged above 55, following the introduction of the McCloud remedy. This proposal also provides a more substantial solution to the

lack of LRF in the section, as it would enable 1995 section members to take the benefits they accrue by the age of 60 without losses or increases, but also carry on working. However as noted above, ideally, we would also like to see LRF introduced for the 1995 section as a straightforward way to actively incentivise these staff members to continue working past 60 if they wish to.

Where this proposal becomes less welcome is the requirement that on reaching minimum pension age (currently 55, or 50 for members with this protected minimum pension age), 1995 section members will only become eligible to partially retire if they reduce their pensionable pay by at least 10%. It seems clear that in order to reduce pensionable pay, working hours would likely have to be reduced. This defeats the proposal's objective to "retain valued experienced staff in the workforce... for longer than they had previously planned." We would therefore like to see the removal of the proposed requirement for a 10% reduction in pensionable pay in order for 1995 section members to take partial retirement.

This section of the consultation document again states that after the suspension of their abatement ends on 31 March 2025, "SCS members would be subject to abatement under normal circumstances until age 60." As stated above, we ask that abatement for SCS members and MHOs until the age of 60 is permanently removed.

This section of the consultation document also states that "abatement will apply to 1995 section members who choose to partially retire (reducing their pensionable pay by at least the required 10%) but whose terms of employment later change again so that their pensionable pay increases to more than 90% of what it was before the original reduction." Further, it notes that "drawdown abatement for members of the 2008 section and 2015 scheme is currently suspended until 31 March 2023 through the retire and return easements and will resume on 1 April 2023." We therefore also ask for permanent removal of the proposed abatement for 1995 section members whose pensionable pay increases to more than 90% of what it was before the original reduction, and of drawdown abatement for members of the 2008 section and 2015 scheme. As the consultation document notes, the latter has been suspended since March 2020 in order to "support capacity during the pandemic and subsequent pandemic recovery period". We would argue that this suspension has proven useful (our members have cited it as "extremely beneficial in supporting service delivery") and supporting additional capacity in the NHS remains vital, therefore making abatement suspension permanent would be beneficial to the service.

Trust leaders have told us that while the proposed changes in this consultation will mitigate existing abatement issues to some extent, it remains counterproductive to apply the principle of abatement as

a whole. If staff take pension benefits, continue working, and eventually exceed their pre-retirement salary, they will lose pension value and will ultimately reduce the number of hours that they work until their pension value is optimised. Abatement inevitably caps hours of work. Trust leaders are also concerned that ending the temporary suspension of abatement may lead to an influx of staff members looking to retire and return before its planned expiry (31 March 2023 for 2008 section and 2015 scheme members; 31 March 2025 for 1995 section SCS members).

If permanent removal of abatement is not possible at this time, we ask that abatement is suspended until 31 March 2025, when 1995 section SCS abatement suspension will also expire. This will provide the time and opportunity to analyse whether the implementation of flexibilities proposed in this consultation is having the intended effect with regards to workforce retention (and consequently increased capacity). In January 2025, a consultation could then be run on whether to resume abatement, continue suspension of abatement, or permanently remove abatement.

Allowing 100% drawdown in the 2008 Section and 2015 Scheme

We agree with the proposal to increase the maximum drawdown percentage which 2008 section and 2015 scheme members can access when taking partial retirement, from 80% to 100%. Our view is that this will provide an increased level of retirement flexibility for these staff groups. We are also pleased that this maximum drawdown percentage will be applied consistently to the 1995 section, 2008 section, and 2015 scheme.

We are pleased that this does not alter the benefit of LRF under the 2008 section and 2015 scheme, but again ask that this benefit is also introduced for the 1995 section.

Correcting regulation 86(3) in the 2015 Scheme

We agree with the proposal that 2015 scheme members who hold additional pension partially retire, and are then subject to abatement, will not have their additional pension abated as well. We welcome the consistency of this proposal with the 2008 section, and welcome DHSC's acknowledgement that regulation 86(3) contained this error.

Removing the 16-hour rule

We agree with the proposal to permanently remove the 16-hour rule for all 1995 section members, including SCS members. We welcome this alignment with the 2008 section and 2015 scheme and agree with DHSC's assertion that this will help to maximise the hours which this staff group can work upon return from retirement.

Removing regulation R4(8) from the 1995 Section

We agree with the proposal to remove regulation R4(8) and thereby align this area of the 1995 section to the 2008 section and 2015 scheme. In essence this equates to the removal of the 16-hour rule for 1995 section members working two NHS jobs who retire from at least one, but keep the other.

Question 2

Do you agree or disagree that the changes to the pension rules regarding inflation should be implemented as proposed in this consultation document?

- agree
- disagree
- don't know

If your response is 'disagree' or 'don't know', please explain why.

We agree with the proposal to align the timing of the CPI rate that is used to revalue accrued benefits in the NHS Pension Schemes, and the CPI rate that is allowed for in annual allowance (AA) tax calculations, in order to ensure that the AA measures only the pension growth that occurs above inflation.

However, we are concerned that there may be transitional issues with this change in the short term, impacting staff who may be planning to retire this financial year. We ask DHSC to consider this potential impact before implementation and provide an appropriate protection scheme as needed.

Question 3

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

- agree
- disagree
- don't know

If your response is 'disagree' or 'don't know', please explain why.

As a point of principle, we are supportive of any proposal which ensures that the NHS Pension Scheme is accessible to anyone who is eligible for it. Widening access to NHS pensions is beneficial,

given the interrelation of all services across the NHS. Initiatives which support access to a good, well-designed pension scheme will aid recruitment and retention across the board.

We are particularly supportive of the proposed changes to scheme access as they will protect the cited staff groups who were facing expiry of their access to the scheme on 31 March 2023.

Question 5

Are there any further considerations and evidence that you think DHSC should take into account when assessing any equality issues arising as a result of the proposed changes?

- yes
- no
- don't know

If your response is 'yes' or 'don't know', please explain why.

While the consultation document references consideration of ethnicity in the implementation of the proposals as they currently stand, we suggest adding explicit consideration of the ethnicity pay gap in the same way that the document considers the gender pay gap. Data from NHS England's [Medical Workforce Race Equality Standard](#) shows evidence of an ethnicity pay gap within the NHS, with averaging 7% less for minority ethnic doctors and dentists when compared to their white peers.

Additional comments

While the proposals in this consultation will go some way to mitigating the effects of issues for higher earners in the NHS Pension Scheme, the fact remains that while the scheme has been frequently amended and addressed, these small shifts aren't resolving the core issue of annual allowance taxation for senior doctors, managers and other clinicians. There was some progress at the Budget in March 2020 when government adjusted pension tax rules to mitigate the effect of the annual allowance 'taper', however, [as we warned at the time](#), this did not solve the core issue. With the NHS working flat out to reduce the care backlog while facing huge workforce and budgetary constraints, it isn't tenable for senior NHS staff to be disincentivised to work. In addition, the NHS Pension Scheme is reliant on higher earners paying in. When they do not, in large enough numbers, the stability of the scheme as a whole is threatened.

As an interim solution (alongside expanding access to partial retirement, removing abatement, and introducing LRF to the 1995 section), government could increase the annual and lifetime allowance caps from the levels they have been reduced to and are now frozen at until 2026. But for a sustainable solution, government should work with stakeholders to create a simpler system which follows the basic rules of a progressive marginal tax system and does not financially penalise hardworking staff for continuing to work in the NHS. A revised system should allow for higher earners to pay their fair share of tax, while also ensuring that additional work and responsibilities are not financially penalised.

While overall fairness is considered in the specific proposals of this consultation, which will impact higher earners in the NHS, we remain concerned about the lack of flexibility regarding pension contribution rates for lower-paid staff. This is particularly pertinent at the current time of increasing cost of living, evidence of higher numbers of staff opting out of the NHS Pension Scheme, and contribution tiers due to change again in 2023. We have already highlighted these concerns in previous submissions regarding [temporary easements](#), and to the consultation on [member contribution rates](#) in January 2022. There are yet to be any proposals which will address the issues faced by lower paid staff in relation to the NHS Pension Scheme. We would welcome exploration of the possibility to introduce flexible levels of contribution to the NHS Pension Scheme for all staff.