

NHS SCOTLAND

EMPLOYER PENSION CONTRIBUTIONS – ALTERNATIVE PAYMENT POLICY (Recycling Employers Contributions)

1. Introduction

- 1.1. The NHS Pension Scheme is a key element of the overall reward package offered to the workforce in NHS Scotland, allowing NHS employers to attract and retain staff. The Scottish Government and NHS Scotland are committed to encouraging participation in the scheme at all levels, ensuring those eligible for scheme membership can effectively plan for retirement.
- 1.2. This policy outlines an option for employees who are current active or deferred members of the NHS Pension Scheme (the NHS Scheme) who can reasonably demonstrate that they will be affected by an annual allowance (AA) tax charge in respect of their pension savings. It will provide those staff who can demonstrate this an option which will allow them to continue to work in their present role with present level of service, and continue to develop in their career journey.
- 1.3. For most employees, it will likely be in their best interests to remain in the NHS Pension Scheme. This policy is intended for those employees affected by the AA tax issue and sets out one option for these individuals. This may not be the best financial option for affected employees and so individuals should consider this policy and any associated information carefully before making a decision. Employees are strongly encouraged to obtain their own financial advice before making any changes.
- 1.4. This policy does not form part of any employee's contract of employment.
- 1.5. Employers would like to see flexible accrual introduced into the NHS Pension Scheme which would support continued membership through providing flexibility on the level of an individual's pension accrual. Such flexibility does not currently exist and the content of this policy will be kept under review and considered in light of any progress on the introduction of pension flexible accrual within the NHS Pension Scheme.

2. Purpose

- 2.1 This policy has been introduced to address operational risks that have been identified as a result of the pension tax regime. In particular, Health Boards have experienced a number of requests for reduced contractual hours, a reluctance to take on additional work and a desire to focus on private work as a direct result of the pension tax regime. There have been many instances of senior staff retiring early. This has a direct impact on sustainability and service delivery as vital senior expertise is lost from the service and is also damaging to overall staff morale. This policy is an attempt to address these operational issues by setting out an alternative option.
- 2.2 This policy is not intended to encourage employees to leave the NHS Pension Scheme or provide advice on options or liabilities. Employees who wish to take advantage of this policy must provide evidence of an existing or likely AA tax liability and if still an active scheme member an opt out form from the date that the alternative payment becomes effective.

- 2.3 The start date of this policy will be 1st October 2022, the date when the power to introduce such a scheme was devolved to NHS Boards in Scotland. The scheme will run initially until 31st March 2023. The policy will be reviewed at the start of each financial year and consideration given to whether the policy is still required, assessing the operational risks identified below, and other relevant factors such as progress on the introduction of flexible accrual, any wider changes to tax rules or pension regulations and its net impact.

3. The Options

- 3.1 Where employees are currently active members of the NHS Scheme or have opted out since April 2022, and can demonstrate that they are adversely impacted by the AA pension tax thresholds and will be likely to be subject to an AA tax charge they can:
- a. Continue in the NHS Scheme and bear any additional tax charges that arise (in the tax year for an AA charge arrangements); or
 - b. Opt out of the NHS Scheme and apply to be paid an alternative payment as explained in 3.2 below (“alternative payment”).

Individuals who opt out of the NHS Scheme will become deferred members and will not be able to make any further money purchase, added years or additional voluntary contributions into the NHS Scheme whilst they remain a deferred member. The length of time an individual is a deferred member may also have longer term implications for re-joining the scheme in relation to revaluation of accrued benefits and eligibility to re-start added years contracts.

- 3.2 Where individuals opt out of the NHS Pension Scheme it is their responsibility to obtain and complete an opt out form, and provide this to their NHS Board for processing, before any alternative payment will be paid. If the alternative payment policy ends it is the individual’s responsibility to opt back in to the NHS Pension Scheme if they wish to do so.
- 3.3 Individuals are strongly advised to seek independent financial advice beforehand as to whether the alternative payment outweighs the benefits of continued membership of the NHS Pension Scheme. The alternative payment will be subject to PAYE and National Insurance Deductions, so this is not a straightforward decision, and in some instance further accrual of pension benefits albeit above AA limits could be more beneficial rather than an alternative payment. Employers cannot provide such advice. It should also be noted that receiving an alternative payment may still result in an AA tax charge being due.

4. Impact of the Alternative Payment

- 4.1 The alternative payment can only be applicable from the date of opt out. If the date of opt out was earlier than 1 October 2022, then the alternative payment will only be effective from 1 October 2022.
- 4.2 The alternative payment will not form part of base salary and would not be included in the calculation of any overtime, or any other payments whereby use of the hourly rate is used in its calculation.

- 4.3 Although not forming part of base salary, the alternative payment will increase the amount paid each month. It will also impact on the following:
- a) The amount of holiday and sick pay. The alternative payment will continue to be paid during these periods of leave, with the exception being half and no sick pay, where the payment will be adjusted accordingly.
 - b) The amount of any redundancy pay calculation. The alternative payment will not be included in the assessment of weekly or monthly pay for the purposes of any redundancy pay calculation as the payment thereof is not linked to work done or working hours done.
 - c) Income for the purposes of the tapered AA may be higher than before as a direct result of being paid the alternative payment and so the annual allowance may reduce for any pension savings already built up in the tax year. This means individuals may be entitled to a lower amount of tax relief on their pension contributions.
- 4.4 The alternative payment will be paid in monthly instalments.
- 4.5 In deciding on the alternative payment, individuals may wish to consider whether it would be financial beneficial to receive the alternative payment (subject to income tax and national insurance contributions) as compared to paying an additional pension tax charge by staying in the NHS Scheme and also consider the effect on pension benefits and growth by staying in the Scheme versus opting out. Employees who are considering opting out of the NHS Pensions Scheme are therefore strongly encouraging to obtain their own independent financial advice.

Employees need to be aware that opting out of the NHS Pension Scheme means that there are differences in benefits when being a deferred member rather than an active member of the Scheme, in particular in areas such a life cover, ill health retirement benefits and death benefits.

- 4.6 The alternative payment that will be paid in the event of an approved alternative payment application will be 12.4% of pensionable pay.

Pensionable pay for the purpose of calculating the alternative payment will be determined by the Health Board but will be based on what the pensionable pay would have been for the purpose of calculating employer contributions paid by the Health Board to the NHS Scheme had the individual continued to participate in the NHS Scheme. This payment will be subject to income tax and national insurance deductions.

5. Eligibility for making a request for the alternative payment

- 5.1 In order to be eligible to make a request under this policy employees must satisfy the following criteria:-
- Be in the employment of an NHS Health Board, Special Health Board, Healthcare Improvement Scotland or NHS National Services Scotland (Common Services Agency).
 - Be an active or deferred (since April 2022) member of an NHS Pension Scheme at the point of application.

- Be able to evidence that they have exceeded the AA or are likely to do so in the current financial year.
- Be reasonably expecting an AA tax charge for the financial year for which they are making an application for the alternative payment.

Given that any AA tax charge will not be confirmed until after the end of the tax year (savings statements are issued in the October following the end of the respective tax year) an assessment must be made to provide a best estimate to evidence the likelihood of an AA tax charge arising. A Ready Reckoner for NHS Scotland should be available on the SPPA website from mid-January to allow a self-assessment to be completed for 2022/23 pensionable earnings.

- 5.2 Individuals are responsible for obtaining whatever advice is necessary for them to make an informed decision, including where appropriate (though not limited to) professional advice from an accountant or independent financial advisor, guidance from the NHS Pension Scheme (<https://pensions.gov.scot/nhs>), information from reputable sources such as professional organisations and unions, HM Revenue & Customs.
- 5.3 Meeting the criteria as set out in paragraph 5.1, does not automatically mean that application for the alternative payment will be approved. A decision on whether or not to approve the application will be made by a panel, as set out in section 8.

6. Application process and evidence requirements

- 6.1 The section below provides guidance for individuals on the information required to support an application. There are two sets of evidence requirements; one for those members of the NHS Pension Scheme (Scotland) who breached the AA limit in 2021-22, who incurred an AA tax charge and can reasonably expect an AA tax charge in the 2022-23 financial year, and one for those who did not incur an AA tax charge in 2021-22 but who reasonably expect an AA tax charge in the 2022-23 financial year.
- 6.2 For those who had an AA tax charge in 2021-22 and can reasonably expect an AA tax charge in the 2022-23 financial year, the following evidence must be provided:
- A copy of your 2021-22 Pension Savings Statement (PSS) issued by SPPA. You will have received a PSS if you breached the AA limit in 2021-22.
 - Evidence of a 2021-22 AA tax charge inputting your 2021-22 pension saving information into the HMRC AA calculator. This calculator will have been used previously if you had an AA breach in 2021-22 to calculate and report the resulting AA tax charge to HMRC.
 - You should also evidence that your pensionable pay for 2022/23 is comparable with that of 2021/22, or would have been comparable if you have already opted out from 1 April 2022 onwards, as a reasonable expectation that you will incur a tax charge again for 2022/23. This being pensionable pay earnings to date from last payslip and estimate earnings for remaining months and where appropriate evidence relating to non-NHS sources of income.
 - Relevant information on any additional non-NHS pensions that would also count towards the annual allowance, if applicable.

6.3 For those who did not have an AA tax breach charge in 2021-22 but who expect an AA tax charge in 2022-23, the following evidence must be provided:

- A copy of your 2022 Annual Benefit Statement available from SPPA's My Pension Online Member Service.
- Evidence relating to non-NHS sources of income for the year to date, if applicable;
- Relevant information on any additional non-NHS pensions that would also count towards the annual allowance, if applicable.
- Evidence that your pensionable pay for 2022/23 is comparable with that of 2021/22, or would have been comparable if you have already opted out from 1 April 2022 onwards, that being pensionable pay earnings to date from last payslip & estimate earnings for remaining months & where appropriate evidence relating to non-NHS sources of income.

You will be required to provide reasonable evidence of an AA tax charge in 2022/23. To aid this an NHS Ready Reckoner is being developed and is estimated for use in mid-January 2023. You will be advised when the Ready Reckoner is available for use, and what you are required to provide from this, as well as any further evidence that may be necessary.

6.4 Impact of high Consumer Price Index (CPI) inflation on AA calculations in 2022-23

Please note that the Ready Reckoner has been designed on the basis that the impact of high CPI inflation on AA calculations in the 2022-23 tax year is not taken into account. This is because the Scottish Government have confirmed that the revaluation date in the NHS Pension Scheme (Scotland) for tax year 2022-23 and future tax years will be amended. The effect of which will be to move the revaluation of accrued career average benefits from the end of a tax year to the start of the following year. Consequently the same CPI value would then be used to calculate the NHS pension savings for members to then measure against their AA. This measure will reduce the risk that NHS staff face AA tax charges as a result of the high CPI for September 2022.

7. Process for applications

- 7.1 Application for an alternative payment should be made on the application form attached to this policy (sample application form attached). All applications must be accompanied by a completed opt out form unless the individual is already a deferred member. The deadline for receipt of an application is 28 February 2023 to allow time for reversing pension contributions made and enacting pay amendments etc. within the 2022/23 financial year, subject to the application being approved. Your NHS Board will advise of specific arrangements for submission of an application.
- 7.2 The application will be verified by your NHS Board to determine whether applicants meet the eligibility criteria.
- 7.3 If eligible, the application will be put forward for consideration by a panel as set out in the Section 8. The applicant will be notified of this.

8. Approval

- 8.1 A decision making panel with clear accountability to the Director of Finance and Director of Human Resource/Workforce will consider the application. The Panel will be under a duty to take into account the eligibility criteria defined in this policy in approving or rejecting applications and must record the justification for each decision.
- 8.2 The panel will meet regularly so that all applications can be considered and a decision made within 10 working days of receipt of a completed application form, appropriate supporting evidence and completed opt out forms, where applicable. The panel will report outcomes to the Director of Finance and Director of Human Resource/Workforce on a regular basis.
- 8.3 The employee will be issued with a letter/email confirming the application outcome and the reason for it, within five working days of the panel's decision.

9. Implementation

- 9.1 Where an application has been successful, the applicant's opt out of the NHS Pension Scheme(s) will be activated by the employer, where applicable. The alternative payment will be paid to the employee on a monthly basis.
- 9.2 The employee will be issued with a letter/email confirming the alternative payment that will be made and the conditions attached to that payment. The alternative payment will apply to an individual's current role only. In the event that an individual in receipt of the allowance changes roles, then the continuation of the alternative payment will be at the absolute discretion of the Health Board, although not unreasonably withheld. If an individual in receipt of the alternative payment subsequently chooses to reduce sessions/working hours, this will automatically trigger a review by the Panel to assess ongoing eligibility.

10. Review Process

- 10.1 Where an application has been refused the applicant may request that the decision is referred to the Director of Human Resource/Workforce and Director of Finance for review. The Director of Human Resource/Workforce and Director of Finance will review the decision taking account of all the material before the decision making panel and any further relevant material provided by the applicant and issue a final decision. There is no further right of appeal in relation to the outcome. However, should a member of staff have a concern about how the process was applied this should be raised under the Once for Scotland Grievance Policy.