



Department  
of Health &  
Social Care

# NHS Pension Scheme: proposed flexibility

## Consultation document

Published 22 July 2019

This consultation is no longer available. The government will review responses as part of the new consultation on senior clinicians' pensions. [The new consultation can be found here.](#)

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# 1. Introduction

- 1.1 The NHS Pension Scheme is a highly valuable part of the package of pay, terms and conditions for NHS staff, which continues to compare very favourably with schemes in other sectors. It provides hard working and dedicated staff with security in retirement after decades of public service and patient care.
- 1.2 However, the relative generosity of the scheme means that for some staff, largely senior doctors, changes since 2010 to the way that wider pensions taxation works are causing significant financial concerns to those doctors and is causing many to look closely at whether it is in their financial interest to do extra work for the NHS. For some, the potential impact of the changes are causing them to consider retirement or withdrawal from the pension scheme.
- 1.3 The taxation regime affects different groups and different individuals in different ways. Initial concerns were focussed on the lifetime allowance as a factor that was leading general practitioners to retire earlier than they had planned, and the BMA proposed at that time an option in which doctors could reduce both their pension contributions and their pensions accrual by 50%, to manage the growth in the size of their pension pot. The recent announcement of consultation on this proposal marks a very important step forward in building a fairer and more flexible approach to NHS pensions, and this consultation sets out how this important flexibility will be of real help to clinical staff who may be impacted by the Government's changes to the wider pension taxation regime.
- 1.4 As this work developed to address issues principally in general practice, the impact of the tapered annual allowance, introduced in April 2016, on both GPs and senior consultants has become increasingly apparent. Both employers and the BMA have expressed concern about the need for wider flexibility to avoid perverse incentives which can cause senior medical staff to reconsider whether or not they can afford to provide additional patient care.
- 1.5 As a result, following discussions with employers and doctors, and informed by the wide engagement that supported the development of the Interim People Plan, as well as consulting on the proposed 50:50 flexibility this document also invites views on ideas that have been put forward already by a range of stakeholders. This document also proposes potential improvements to the management of tax bills that do occur through changes in the way that "Scheme Pays" arrangements operate in the NHS Pension Scheme. These proposals offer very significant opportunities for highly valued senior clinicians to continue to provide additional care for the NHS, tailor accrual to the level that they wish to achieve, taking into account desired pension growth and the tax implications. Where tax bills do occur, as is the case currently they will not need to pay substantial tax bills up front, but

would see more clearly the impact of scheme pays on their final pension position. By tailoring accrual to manage annual allowance, it also enables easier management of the build up to the life-time allowance limit.

- 1.6 The Department is in ongoing discussions on these issues with employers and the BMA and this document sets out other flexibilities which have been proposed. Whatever final proposals are adopted, the Government remains concerned that, even with the important further flexibilities discussed here, dealing with the complexities of the interaction between tax, pay, pensions and additional work for the NHS are a burden on hard working staff, and the document seeks views on how employers, unions and the pension scheme itself can provide more effective support to individuals in managing them.
- 1.7 The Government is committed to ensuring that hard working staff who provide additional care for NHS patients do not find themselves considering reducing their work commitments, as a result of the interaction between their pay, their pension and the tax regime that surrounds this. The consultation therefore seeks views on how new important flexibilities in the way the pension scheme operates can ensure that senior clinicians are rewarded properly for additional work whilst managing the impact on their pension and their tax liabilities in a fairer manner.

## **Executive Summary**

### **The Challenge of the Tapering Annual Allowance**

- 1.8 The NHS Pension Schemes are a valuable part of the total reward package for NHS staff and are among the most generous pension schemes available. However, for a relatively small but important group of staff, the interaction of the Schemes with the pension tax regime has created significant challenges. The evidence the Department has demonstrated that the largest groups affected are high earning consultants and GPs. Stakeholders have suggested that the effect of this is that for some high earners, the value of the total reward package that they receive with employer pension contributions of 20.6% is diminished compared with members at lower earnings levels.
- 1.9 Since 2010, there have been progressive restrictions on the amount that individuals can save in a pension and receive tax relief. There are two mechanisms used to give effect to this; the Lifetime Allowance and the Annual Allowance. The Lifetime Allowance has reduced from a high of £1.8m in 2011-12 to £1.055m now. This means that an NHS pensioner can have a pension of £45,870 and a lump sum of £137,610 before they are liable for a tax charge payable when they take their pension.

- 1.10 The Annual allowance has reduced from a high of £255,000 in 2010-11 to £40,000 this year. A £40,000 Annual Allowance meant that an NHS Pension Scheme member could increase their pension by £2,500 before a tax charge is incurred. A member of the 2015 NHS Pension Scheme would accrue £2,500 pension when their pensionable income is £135,000. Average consultant pensionable pay is around £90,000. Tax bills arising from these allowances were relatively easy to predict and manage.
- 1.11 In April 2016, tapering of the Annual Allowance for those whose net income (the taxable income shown on their payslip) exceeds £110,000 and whose adjusted income (net income plus annual pension growth) exceeds £150,000 was introduced. Tapering reduces the amount of annual allowance by £1 for every £2 over £150,000. The minimum annual allowance for adjusted income over £210,000 is £10,000. The tax year 2019/20 is the 4th year since tapering was introduced and therefore the potential for carry forward of allowances has been greatly reduced. Critically, the tapered annual allowance calculation includes non-pensionable pay, including pay for additional sessions above full-time hours worked by many consultants and therefore has brought increasing numbers of high earners in the NHS within the scope of pension tax. Whilst we have received a number of representations on this issue and its impact on consultants, in particular, matters of tax policy are the responsibility of the Treasury.
- 1.12 NHS consultants and GPs have the opportunity to take on additional work each year and can flex their income up or down. Consultants typically volunteer for additional non-pensionable sessions of work, often at short notice, to cover service pressures. As payment for this work counts towards the tapered annual allowance, many more senior clinicians are being caught by pension tax. The design of the taper also creates cliff edges. It has been argued by some that the operation of the taper is difficult to predict, particularly when a senior clinician is unsure what level of income that they will earn within a tax year. Around a third of NHS consultants and GP practice partners have earnings from the NHS that could potentially lead to them being affected by the tapering annual allowance.

## **Managing Annual Allowance Tax Bills**

- 1.13 The Department has already taken steps to help high earners manage annual allowance tax bills by extending the use of the scheme pays facility. This means that members of the NHS Pension Scheme who incur pension tax have the option of settling the tax up front or choosing for their tax liability to be met by the NHS Pension Scheme, on their behalf. If the member utilises the Scheme Pays facility, then Scheme Pays effectively loans the member the amount required to meet their tax liability, therefore the debt owed by the member (plus interest) is deducted from the member's pension at retirement. Scheme Pays is available to all

members of the NHS Pension Scheme and provides members with an option to meet their tax liability without having to meet the liability at the time that it is incurred.

- 1.14 Whether affected members choose to utilise Scheme Pays or to meet their tax liability up-front will be a matter for the individual member and is likely to depend on their individual circumstances. Scheme members who are high-earners early in their career may incur such tax charges frequently throughout their career. Whilst these tax charges can be met through Scheme Pays or up-front, affected members may wish to choose to slow down their pension accrual in order to manage their financial position. The Department is aware that some members are considering reducing their workload in order to slow down their accrual. This consultation document is seeking views on the introduction of a flexibility that would allow senior clinicians the ability to reduce their accrual without changing their working patterns.
- 1.15 This consultation document also seeks views on whether the NHS Pension Scheme should adopt an alternative arrangement for the operation of the scheme pays facility that may be more transparent for members. This would involve members being given a pension debit so that they can see the adjustment to their pension as a result of opting to use scheme pays to meet their tax liability at the time they choose to use scheme pays instead of at retirement.

## **Scheme Accrual Flexibilities**

- 1.16 As mentioned in paragraph 1.14 above, Scheme Pays, whilst important, does not allow high earners to reduce their pension tax liabilities. Whilst some private sector pension schemes offer members the flexibility to tailor accrual to manage annual and lifetime allowance risks, this is not currently a feature of the NHS Pension Schemes. The Department is therefore consulting on draft proposals to introduce pension flexibility within the NHS Pension Scheme to give clinicians affected by annual allowance tax charges the option to reduce the rate at which their pension builds up and pay correspondingly lower contributions.
- 1.17 At the time of the publication of the Interim People Plan, it was announced that the Department would consult on a 50:50 option whereby senior clinicians who expect to be affected by the annual allowance can elect at the beginning of the year to reduce their contributions and their pension accrual by 50%. This will enable most senior clinicians to significantly reduce or remove any tax bills arising from the tapered annual allowance.
- 1.18 This document explores and seeks views on the 50:50 flexibility but also how using the existing scheme provision of being able to purchase additional pension

by lump sum could increase flexibility and enable clinicians to tailor their accrual closer to their desired level. It would be possible for members and employers to purchase the additional pension using some of the saved pension contributions. The document also seeks views on other possible flexibility options, including allowing clinicians to opt for a range of accrual levels other than just 50% or 100% and allowing clinicians to maintain membership of the scheme without any accrual beyond buying additional pension. The Department is determined to find a solution that creates the right balance of incentives for clinicians to perform the services that the NHS needs.

- 1.19 Even with the changes proposed here, or a variation that is proposed during consultation, the management of tax, pay and pensions – both in year and over a career – is a matter which can take considerable amounts of individual time, or independent advice, to manage. As part of this consultation we would welcome views on how employers, the NHS Pension Scheme and trades unions can work to support staff in understanding these issues, to minimise the administrative burden of personal finance management on hard working clinicians.
- 1.20 Such complexity can also cause financial impacts that vary between groups of clinicians and the different employment models of consultants and general practitioners are important here. We would welcome views on how the proposals here support both groups, and what refinements to the core proposal might ensure that both are better able to manage these issues effectively. Even with these refinements, in a large and complex medical workforce, where there is a diverse range of individual career patterns, there may well be particular cases where there are unanticipated limitations on how the flexibilities will help address the issues set out here. We would welcome insights from respondents on where these circumstances might occur and how they might best be managed through changes to pensions rules, whilst remaining within the confines of current tax policy.
- 1.21 For example, in pre-consultation discussions with the medical profession and employers on the core proposal, some have highlighted such concerns about this model. Stakeholders have put forward suggestions that:
- (a) that those who expect to be affected by pension tax could elect at the beginning of the year to set the level of accrual that they wish to be pensioned at (possibly in 10% increments or 25% increments). This would be set at a “safe” accrual level, giving the individual doctor headroom to take on additional work. This could include a “zero plus” accrual option, with no main scheme accrual providing there was a purchase of additional pension during the year;
  - (b) those who expect to be affected by pension tax could use unused employer and employee contributions to top up accrual, with additional pension bought by lump sum towards the end of the year when they are clearer on total

earnings. There might be no limit on this additional pension (the limit normally is £6,500 in total) and there could be common unisex and age factors so that all consultants pay the same amount for the added pension regardless of those elements;

- (c) employers could have the discretion to pay by non-recurrent lump sum any unused employer contributions at the end of the year
- (d) the Department could also introduce a phasing in of pensionability for increments and pay on promotion made to high earners, so that, for example, the pensionability of a 10% pay rise might be phased in over three years to manage tax implications.

1.22 The NHS Pension Scheme remains one of the most generous pension schemes on offer and will continue to be an important part of the reward offer for all staff, including high-earners. The proposals set out in this consultation document are intended to offer senior clinicians the tools to make decisions about the level of pension growth they wish to achieve taking into account pension taxation. Where tax is incurred, the proposed changes to Scheme Pays will provide increased transparency as well as flexibility in how the liability is met.

## **Consultation purpose**

- 1.23 The NHS Pension Schemes are a valuable element of the total reward package offered by the NHS to staff. The NHS Pension Schemes provide generous benefit accrual for members and the Department understands this means many senior clinicians are exceeding their annual allowance for tax-free pension saving, producing a tax charge. In response, there is evidence that senior clinicians are managing their annual allowance tax charge liability by reducing their workload, turning down extra responsibilities or opportunities and/or retiring early. Consequently, there is a reduction in NHS service capacity and patient care is adversely affected.
- 1.24 This consultation document outlines the issue, describes the impact and considers introducing a targeted pension flexibility. Currently, the Department is proposing to target flexibility at clinicians, provided that doing so is reasonable and proportionate.
- 1.25 This consultation document explains the steps that some clinicians are understood to be taking in response and recognises the benefit of a more structured pension flexibility within NHS Pension Scheme rules. Chapter 4 sets out a proposed 50:50-type flexibility and invites views.

- 1.26 Chapter 5 explains how the Scheme Pays facility, a mechanism that members can use to settle their tax charges, works in the NHS Pension Scheme and proposes a potential improvement.

## Consultation questions

- 1.27 The Department would like to receive responses from stakeholders and members of the public on the following consultation questions:

### The NHS Pension Scheme and tax incentives for pension saving

**Do you have any suggestions on how employers, the NHS Pension Scheme and trades unions can work to support staff in understanding these issues, to minimise the administrative burden of personal finance management on hard working clinicians?**

### The case for pension flexibility

- 1. Do you agree that a structural solution should be provided within the NHS Pension Scheme architecture?**
- 2. Do you agree with the rationale for targeting pension flexibility at GPs and consultants?** If not, why not?
- 3. Do you agree with the proposal to extend such flexibility to all clinicians, with an expectation of exceeding their annual allowance, as they are in an analogous position?** If you agree, please provide evidence that annual allowance tax charges affect other clinical staff groups in a way that leads to a reduction in NHS service capacity and impacts patient care. If you disagree, please explain why you disagree.
- 4. Do you agree that pension flexibility should be limited to clinical staff only?** If you disagree, please explain and provide evidence for why you believe annual allowance tax charges affect non-clinical staff in a way that leads to a reduction in NHS service capacity and impacts patient care.
- 5. Do you agree that the proposal should be limited to high-earning staff with a reasonable expectation of exceeding their annual allowance?** If you disagree, please explain why you believe that extending the flexibility to all staff members would have a positive impact on NHS capacity and service delivery.

## Proposed pension flexibility

- 1. Recognising that changes to the pension tax system are not under consideration, does a 50:50 option, combined with the ability to purchase Additional Pension, create the right balance of incentives for clinicians to continue to provide the services the NHS needs? *Please set out the reasons for your answer.***
- 2. If not, in what ways could the 50:50 proposal be developed further?**
- 3. Should any refinements be made to the 50:50 proposal in order to account for the different employment models for clinicians and any consequent limitations on how the flexibility will assist particular groups?**
- 4. Are there other changes to the NHS Pension Scheme that Government should consider that provide the right balance of incentives and maintain pensions that are fair to both members and the taxpayer?**

## Improving Scheme Pays

**Do you think that the NHS Pension Scheme should discontinue the NDC approach to Scheme Pays deductions in preference to adopting the debit method? *Please set out the reasons for your answer.***

## Equality Impact Assessment

- 1. To what extent will the proposal to target the flexibility have an impact on people with one or more protected characteristics?**
- 2. To what extent will the proposal to provide a 50:50 option have an impact on people with one or more protected characteristics?**
- 3. To what extent would adopting the debit method for Scheme Pays have an impact on one or more protected characteristics?**

## How to respond

Comments on the proposals can be submitted online at the gov.uk website

By email to:

**NHSPSconsultations@dhsc.gov.uk**

Or by post:

NHS Pensions Policy Team  
Department of Health and Social Care  
2W54 Quarry House  
Quarry Hill  
Leeds LS2 7UE

The consultation will close on 14 October 2019.

## Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the [Department of Health and Social Care's Personal Information Charter](#).

Any information received, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 ("FOIA"), the Data Protection Act 2018 (the "DPA 2018") and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you would explain to us why you regard the information that you have provided as confidential. If we receive a request for disclosure of the information you have provided we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA 2018 and in most circumstances this will mean that your personal data will not be disclosed to third parties.

## 2. The NHS Pension Scheme and tax incentives for pension saving

### The NHS Pension Scheme for England & Wales

- 2.1 The NHS Pension Schemes for England & Wales (the "Scheme") are provided to staff working in the NHS and other approved organisations who deliver certain services or functions that support the NHS. There are two separate Schemes: the 2015 Scheme under the National Health Service Pension Scheme Regulations 2015 and an earlier Scheme comprising a 1995 Section (under the National Health Service Pension Scheme Regulations 1995) and a 2008 Section (under the National Health Service Pension Regulations 2008). The 2015 Scheme provides pension benefits calculated on a career average revalued earnings basis. The 2015 Scheme replaced the earlier 1995/2008 NHS Pension Scheme which is closed to new entrants. The 1995/2008 Scheme provides pension benefits based on final salary for employees, or career average earnings for General Practitioners and General Dental Practitioners.
- 2.2 Transitional arrangements following introduction of the 2015 scheme mean that many NHS staff have benefits accrued in both the 1995/2008 Scheme and the 2015 Scheme. However, a [recent judgment by the Court of Appeal in the cases of McCloud and Sargeant](#) found that transitional arrangements gave rise to unlawful discrimination. Whilst the judgment found against the Judges' and Firefighters' pension schemes, the Government announced on 15 July that it accepts the judgment applies to other public service pension schemes, including the NHS, and will remedy the discrimination in all the schemes.
- 2.3 Around 90% of NHS staff participate in the NHS Pension Scheme. The Scheme is administered by the NHS Business Services Authority (the "BSA") on behalf of the Secretary of State for Health and Social Care. There are around 1.5 million actively contributing members, 650,000 people who have left the scheme but not yet claimed their pension, and 900,000 pensioners. At 31 March 2018 there were 8,674 participating employers, the majority of whom are GP practices though most scheme members are employed by NHS Trusts and Foundation Trusts.
- 2.4 The NHS Pension Scheme is a valuable and valued component of the reward package for NHS staff, helping employers recruit and retain their workforces. The NHS Pension Scheme is high quality, providing generous retirement and life assurance benefits including a retirement lump sum (optional in some cases), an annual pension and benefits for a surviving partner and dependants. Benefits accrue at a rate of 1/80th pensionable pay (1995 Section), 1/60th (2008 Section)

or 1/54th with annual revaluation by the rate of CPI + 1.5% (2015 Scheme). The normal pension age at which benefits become payable is 60 (1995 Section), 65 (2008 Section) or the member's state pension age (2015 Scheme). The [BSA's website](#) provides further detail of the benefits provided.

2.5 Each member contributes a percentage of their pensionable pay towards the cost of their pension benefits. The percentage rate is based on the level of a member's pensionable pay, and ranges between 5% and 14.5% (before tax relief). Employers also contribute to the cost of pension benefits at a rate of 20.6%, plus a scheme administration levy of 0.08%.

2.6 The table below shows the size of average annual pensions paid at retirement<sup>i</sup>.

Staff type	Average annual pension at retirement
GP	£44,000
Consultant	£40,000
Nurse, midwife & physiotherapist	£11,500
All NHS staff, excluding GPs & consultants	£6,400

## Funding model for the NHS Pension Scheme

2.7 The NHS Pension Schemes are statutory unfunded, defined benefit ("DB") occupational pension schemes backed by the Exchequer. In DB schemes the benefits received at retirement are calculated according to a pre-set formula determined by the scheme rules. It is not dependent on the level of contributions made. DB schemes need to predict contribution income when pricing the level of contributions required to deliver the pre-set benefits. DB schemes are therefore inherently less flexible and do not usually allow their members to vary the amount that they contribute to the scheme.

2.8 Many private-sector pension schemes are defined contribution ("DC") pension schemes. Members of DC schemes usually have more flexibility over the amount they contribute towards their pension pot. Both the member and employer contributions are invested to grow the pot, which can be used to buy a pension annuity or drawn down at retirement. Pension growth is therefore directly linked to the level of contributions made.

2.9 In common with other major public service pension schemes, except the Local Government Pension Scheme, the NHS Scheme is 'unfunded' and does not manage a pool of assets out of which pensions are paid. It is instead financed by

the Exchequer on a 'pay as you go' basis. This means the Exchequer pays pension liabilities as they fall due and uses contribution income from employers and staff to defray the cost of pensions already in payment. However, the pension rights building up in the scheme are fully financed at the time they are earned. An actuarial valuation is conducted every four years to ensure the level of contributions made by staff and employers meet the full cost of their pension rights as they accrue them. The Exchequer meets the cost of any shortfall in the cashflow between pensions paid and contributions received and would also retain any surplus.

- 2.10 Membership of the NHS Pension Scheme for eligible members is automatic and the NHS Pension Scheme currently has 1.5m actively contributing members. Where individuals withdraw from the Scheme (opt-out), this reduces the amount that the Scheme expects to receive in contribution income but also reduces long-term liabilities in the form of membership benefits being bought that will subsequently be paid to retired members in the future.
- 2.11 In the financial year 2019-20, the Scheme expects to receive contribution income of £10.1 billion from employers and £4.8 billion from members. The Government Actuary's Department have valued the pension liabilities of the Scheme at £526.1 billion as of 31 March 2018.
- 2.12 The fiscal framework within which the NHS Pension Scheme operates is therefore an important consideration when changing scheme rules. Any changes that have a significant effect on contribution income, such as flexibility that leads to a lower level of contributions being paid, produces an immediate fiscal impact for the Exchequer. The Government must therefore balance the benefit of changes with the corresponding cost risk to the Exchequer.

## **Tax incentives for pension saving**

- 2.13 The Government wishes to encourage pension saving to help people ensure they have an income or funds throughout retirement. It is for this reason that pension contributions are tax-free for the majority of savers.
- 2.14 Pension tax relief works on the principle that pension contributions are exempt from income tax when they are made, but the pension is then taxable when paid. Pension contributions are usually paid out of pre-tax salary, so tax relief is received at the individual's marginal tax rate.
- 2.15 However, tax relief on pension contributions is one of the most expensive reliefs in the personal tax system. In 2017-18, income tax relief and employer National Insurance Contributions relief cost the Exchequer over £50 billion, with

approximately two-thirds of the relief claimed by higher and additional rate income taxpayers.

- 2.16 In view of this cost, the annual and lifetime allowance pension tax policies were introduced by the Government to limit the amount of pension savings that can receive tax relief. Reforms made to these allowances in the previous two Parliaments are expected to save over £7 billion a year and are necessary to deliver a fair system and to protect public finances. These measures affect those on the highest incomes with significant pension accruals. 95% of people currently approaching retirement have a pension pot worth less than the current lifetime allowance limit of £1.055m, while the median pension pot for individuals approaching retirement is around £170,000.
- 2.17 The Government keeps its lifetime and annual allowance tax policies under review. The 2018 Autumn Budget confirmed that the lifetime allowance would rise from £1.03m to £1.055m in April 2019, in line with the Consumer Prices Index ("CPI") to ensure the benefit is not eroded. The standard annual allowance remains at £40,000, although it can taper down to a minimum of £10,000 for the highest earners. The taper is applied where two tests are met. First, the individual must have net income (the taxable income shown on their payslip) in excess of £110,000. Where this is the case, the taper reduces the standard annual allowance at a rate of £1 allowance for every £2 of adjusted income over £150,000. Adjusted income is net income plus annual pension growth. The £10,000 minimum allowance is reached where adjusted income is £210,000 or above.
- 2.18 The Lifetime Allowance and Annual Allowance measures allow individuals to make significant amounts of pension savings tax-free, whilst ensuring incentives to save are targeted across society.
- 2.19 In the context of the 1995 final salary section of the NHS Pension Scheme, individuals who use up the full £40,000 annual allowance would see their annual pension increase by around £2,500. Members who accumulate benefits worth the current lifetime allowance of £1.055m can expect an annual pension of around £46,000 a year plus a tax-free lump sum on retirement of £138,000. Pensions of this size provide substantial financial security in retirement, and it is right that the Government takes steps to limit tax reliefs for those who benefit disproportionately from them.
- 2.20 These allowances apply to all pension savers, working in both public and private sectors. Tax charges are incurred by individuals where the growth in pension benefits breaches the member's lifetime or annual allowances. The lifetime allowance tax charge depends on how the value of benefits in excess of the limit are paid to the member: 25% for annual pension, 55% for lump sum. The tax

charge is deducted from the pension benefits upon crystallisation, usually when the pension is claimed or transferred to another scheme. The annual allowance charge is typically taxed at 40% or 45%, and is the marginal rate of income tax that the member would be charged if their taxable income was added to the amount of pension saving in excess of their annual allowance.

- 2.21 Individuals can settle their annual allowance tax charge either by paying it upfront or electing to have it paid via the 'Scheme Pays' facility operated by the NHS Pension Scheme. The NHS Pension Scheme pays the charge on behalf of the individual and then deducts it (plus interest) from the value of their pension upon retirement. The NHS Pension Scheme effectively loans the required funds to the member. By design, using Scheme Pays produces a lower pension than if the tax charge was paid upfront. Interest is applied to the charge at a rate that is cost neutral to the NHS Pension Scheme, so other members and employers do not subsidise tax charges. Scheme Pays provides a straightforward way for members to settle their tax charge without needing to find additional funds whilst benefitting from the income tax relief on their pension contributions. Scheme Pays can also help reduce Lifetime Allowance charges as the pension is assessed against the Lifetime Allowance after the Scheme Pays deduction is applied.
- 2.22 The Department has already put in place for NHS Pension Scheme members all possible flexibility under HMRC legislation. The scope of the Scheme Pays facility implemented by the Scheme has been extended to cover the payment of annual allowance tax charges of any amount, and those arising from breaches of the tapered annual allowance. From tax year 2017-18 a member can elect for the scheme to pay 100% of their annual allowance charge to HMRC on their behalf.
- 2.23 Chapter 5 sets out further information about the Scheme Pays facility and proposes a potential change that could ensure it operates in a more transparent manner that helps members understand the impact of a Scheme Pays deduction on their pension benefits.
- 2.24 The Department is conscious that pension tax is a complex matter that may require independent advice for members to understand and manage the implications of any liability. The Department welcomes views on how employers, the NHS Pension Scheme and trades unions can work to support staff in understanding these issues, to minimise the administrative burden of personal finance management on hard working clinicians.

*Consultation question*

**Do you have any suggestions on how employers, the NHS Pension Scheme and trades unions can work to support staff in understanding these issues, to minimise the administrative burden of personal finance management on hard working clinicians?**

### 3. The case for pension flexibility

- 3.1 Across all public service workforces, the Government looks at remuneration in the round and takes action where required to ensure delivery of first-class public services. Where there is evidence that the delivery of services is being impacted, the Government is prepared to take appropriate action to address this.

#### The impact of pension tax

- 3.2 The Government is listening to concerns raised by senior doctors and their employers that annual allowance tax charges are discouraging them from performing extra work for patients or maintaining their current level of commitments. The increased income from this work could trigger their annual allowance to taper downwards thereby increasing the annual allowance tax charge arising from growth in their NHS pension. In some circumstances, the prospect of a large annual allowance tax charge could decrease the financial attractiveness of undertaking the additional work.
- 3.3 Consultants perform relatively high amounts of discretionary work which is mainly non-pensionable. Many offer further sessions to deliver waiting list initiatives and will also take on additional responsibilities such as clinical director roles. The taper assesses all taxable income, therefore non-pensionable income contributes to reducing the annual allowance where the individual crosses the £110,000 tapering threshold and has adjusted income above £150,000. However, the point at which an annual allowance charge emerges will vary between individuals according to their income and amount (and type) of pension already accrued.

#### *Example 1 - average pensionable pay*

A consultant with an average<sup>ii</sup> basic pay (pensionable) of £91,532, increased by 2% from the previous year, 14 years' service in the final salary 1995 section and £5,300 of accrued CARE<sup>iii</sup> pension in the 2015 scheme. That consultant would need to have non-pensionable earnings of at least £62,800 before an annual allowance charge is incurred. Therefore, a lower amount of non-pensionable earnings would not result in an annual allowance charge and non-pensionable earnings of £70,000 would incur an annual allowance charge of £1,579.

### *Example 2 - higher pensionable pay*

If the consultant instead had pensionable pay of £153,000, increasing by 2% from the previous year, and £8,000 of accrued CARE pension in the 2015 scheme together with 14 years' service in the 1995 section. Without any extra non-pensionable work, there would be an annual allowance charge of £9,691. If the consultant utilises Scheme Pays to pay the annual allowance tax charge, then they will accrue £3,090 of annual pension<sup>iv</sup>. If the consultant chooses to pay their tax charge up front, then they will accrue £3,738 of annual pension<sup>v</sup>.

The annual allowance tax charge would be increased by almost £5,500 if the consultant earned an extra £20,000 through non-pensionable work because the total annual allowance tax charge would increase to £15,150. If the consultant utilises Scheme Pays to pay the annual allowance tax charge, then they will accrue £2,726 of annual pension<sup>vi</sup>. Again, if the consultant chooses to pay their tax charge up front, then they will accrue £3,738 of annual pension<sup>vii</sup>.

- 3.4 Example 1 demonstrates that some consultants are unlikely to receive large regular annual allowance charges, however example 2 shows that at higher levels of pensionable pay there is greater potential for significant regular annual allowance tax charges. It also demonstrates the choices available to the consultant when settling their annual allowance tax charge; utilising Scheme Pays or settling the tax liability up front.
- 3.5 Examples 3 and 4 below show how large increases in pensionable pay or long service in the final salary 1995/2008 Scheme can lead to higher annual allowance charges, as these factors substantially affect pension growth. Again, it demonstrates the choices available to the consultant to settle their tax bill. The consultant in the example receives a pay rise which is above-inflation which results in an increase to the consultant's lump sum. In order to demonstrate this and the impact utilising Scheme Pays will have on the lump sum, lump sum figures are included in the examples.

#### *Example 3 - large increase in pensionable pay*

A consultant has pensionable pay of £112,200, increased by 10% from the previous year, with £55,000 in non-pensionable income, producing total pay of £167,200. The consultant has £5,300 of accrued CARE pension in the 2015 scheme together with 14 years' service in the 1995 section.

In this scenario, the consultant would incur an annual allowance tax charge of £23,765. If the consultant utilises Scheme Pays to pay the annual allowance tax charge, then they will accrue £2,973 of annual pension and grow their lump sum by £4,076<sup>viii</sup>. If the consultant chooses to pay their tax charge up front, then they will accrue £4,121 of annual pension and grow their lump sum by £5,355<sup>ix</sup>.

#### *Example 4 - long service in the final salary scheme*

The consultant in example 3 is older and is a transitionally protected member with 30 years' service in the 1995 section and no CARE pension in the 2015 Scheme. With all other circumstances the same as example 3, the consultant would incur an annual allowance tax charge of £32,783.

If the consultant utilises Scheme Pays to pay the annual allowance tax charge, then they will accrue £3,764 of annual pension and grow their lump sum by £11,293<sup>x</sup>. If the consultant pays their annual allowance tax charge up front then they will grow their pension by £5,100 a year and add £15,300 to their retirement lump sum<sup>xi</sup>.

- 3.6 The Government recognises that the action some members are taking in response to their concerns about, or experience of, annual allowance tax charges is impacting the delivery of NHS services and patient care. NHS employers report that consultants are increasingly no longer willing to work additional sessions to reduce waiting lists, fill rota gaps or take on additional supervisory responsibilities. The lost capacity can be difficult to replace especially in clinical specialties where there are already shortages, and expensive as employers can pay a premium for locums to bridge the gap.
- 3.7 An independent review<sup>xii</sup> of the GP partnership model on behalf of the Department found pension tax to be a factor in decisions by GPs to reduce their NHS commitments or retire prematurely. 57% of GPs who retired in 2018-19 took early retirement, a total of 610.

- 3.8 The pension tax system supports individuals to save for their later life. Reforms in the last two Parliaments to support fiscal sustainability have limited the benefit of income-tax relief on pension contributions for the highest earners in society who benefit most from this relief. Clinicians are rightly well remunerated for their work. Outside the public service, some employers may adjust benefit packages to enable high-earning employees to target a lower level of pension saving and so reduce the potential for large regular annual allowance tax charges. In most DC pension schemes, the member can reduce the rate at which contributions are made to their pension.
- 3.9 The NHS Pension Scheme does not currently allow any flexibility over benefit accrual or the level of contributions. Where an individual chooses to participate in the scheme for an employment, all regular earnings from that employment must be pensionable unless excluded by the Scheme rules. The Government takes the view that it is important to ensure a good level of pension saving and reward packages are set on that basis. The total reward package for NHS staff is kept under review by Government with recommendations made by the pay review bodies taken into consideration.
- 3.10 However senior clinicians, particularly consultants and GPs, have a unique degree of flexibility over their workloads and can vary their commitments. Consultants can reduce or increase the number of additional sessions undertaken, and many GPs are self-employed. This can create perverse incentives for clinicians to seek to control their income and pension growth by limiting or even reducing their NHS work to avoid breaching their annual allowance.
- 3.11 Additionally, as highlighted in example 3 above, a one-off substantial increase in pensionable pay can lead to a large spike in pension growth for that year and a higher annual allowance tax charge that is not replicated in the subsequent years. In some cases, the carry forward of up to three years of previous unused annual allowance may help minimise the tax impacts of such an increase. The NHS Pension Scheme does not have any flexibility to gradually increase the pensionability of any pay award to smooth such spikes. The BMA have suggested that flexibility could take the form of phasing the degree to which a pay award counts towards the member's pension - for example 50%, 75% and 100% over a three-year period. This is likely to be more helpful for high-earners who are seeking to manage their annual allowance tax liability. However, lower earners may prefer that their pension is calculated based on the full amount of their pay straightaway.
- 3.12 Retaining and maximising the contribution of our highly-skilled clinical workforce is crucial to delivery of the ambitions for patient care set out in the Long-Term Plan for the NHS. The Government recognises that the fixed structure of the NHS

Pension Scheme combined with the pension tax relief rules that apply across all pension savers, could create unintended consequences for NHS service capacity and the delivery of patient care.

- 3.13 Accordingly, the Government will consider appropriate changes to the NHS Pension Scheme to make it more flexible where necessary to create the right balance of incentives for clinicians to deliver the services that the NHS needs. In line with the Government's principles for public sector pay and pension policy, any flexibility must be affordable, targeted at affected staff and drive productivity.
- 3.14 Whilst the evidence of service impact is strongest for consultants and GPs, the Department believes that other clinicians such as senior nurses and dentists can also incur annual allowance tax charges, particularly those with long service in the NHS Pension Scheme, and that they also may have the flexibility in their roles such that they can choose to work fewer hours or not take on additional duties in response. Consequently, there is the potential for a similar impact on NHS service capacity and the delivery of patient care as that evidenced for senior doctors. The Department invites evidence to test and confirm this position. If such evidence does not exist and annual allowance tax charges do not appear to affect clinicians other than doctors in a way that leads to a reduction in NHS service capacity and impacts patient care, then the Department will reconsider this position.
- 3.15 There is a less clear case that annual allowance tax charges are creating similar retention and productivity issues in the non-clinical NHS workforce. Whilst non-clinical staff may exceed their annual allowance, the Department has not yet seen evidence that it has the same impact on the capacity of NHS services and patient care. This might be because the nature of these roles provides less or no scope to vary or reduce their working commitments or substantially increase their income through additional tasks and responsibilities. The Department is open-minded on the issue and invites respondents to submit evidence that non-clinical staff exceeding the annual allowance is leading to a reduction in NHS capacity and impacts patient care.
- 3.16 Lower earners are unlikely to be affected by annual allowance tax charges, particular as a result of the tapering rules. Accordingly, it is anticipated that the annual allowance charge is thought unlikely to impact the retention and productivity of these staff. Offering a general pension flexibility to all staff is therefore not under consideration at present. The Government keeps the impact of public sector pay and pensions policies under constant review, taking account of total reward and fiscal considerations. The reward package for NHS staff, including both pay and pensions, is independently assessed by relevant Pay Review Bodies. The Government takes review body recommendations into consideration. However, the Department is interested in hearing respondents'

views on whether the proposal should be limited to members of the NHS Pension Scheme with a reasonable expectation of exceeding their annual allowance or whether it should be extended to the NHS workforce as a whole. The Department is particularly interested in evidence that such an extension would have a positive impact on NHS capacity and service delivery.

*Consultation questions*

**1. Do you agree that a structural solution should be provided within the NHS Pension Scheme architecture?**

**2. Do you agree with the rationale for targeting pension flexibility at GPs and consultants?** If not, why not?

**3. Do you agree with the proposal to extend such flexibility to all clinicians, with an expectation of exceeding their annual allowance, as they are in an analogous position?** If you agree, please provide evidence that annual allowance tax charges affect other clinical staff groups in a way that leads to a reduction in NHS service capacity and impacts patient care. If you disagree, please explain why you disagree.

**4. Do you agree that pension flexibility should be limited to clinical staff only?** If you disagree, please explain and provide evidence for why you believe annual allowance tax charges affect non-clinical staff in a way that leads to a reduction in NHS service capacity and impacts patient care.

**5. Do you agree that the proposal should be limited to high-earning staff with a reasonable expectation of exceeding their annual allowance?** If you disagree, please explain why you believe that extending the flexibility to all staff members would have a positive impact on NHS capacity and service delivery.

## 4. Proposed pension flexibility

- 4.1 The Department recognises that some staff are already taking steps to reduce their exposure to annual allowance tax charges.
- 4.2 Some clinicians are, or are considering, reducing their NHS workload or declining additional duties. Others are engaging in a practice of continually opting-out and opting-in of the Scheme. This is where the member chooses to opt-out from the scheme part way through the year at a point where pension growth from further membership would lead to an annual allowance charge. The same member subsequently re-joins at the start of the next tax year. A drawback for the member is the loss of 'death-in-service' life assurance and ill-health retirement cover which are only available with active membership. Whilst the optimal point to opt-out may be difficult to predict, it does allow members to control their pension accrual.
- 4.3 Where members choose to opt-out of the scheme because of annual allowance charges, there are reports that some employers are considering paying to them the value of the forgone employer contribution. This already happens for GP partners who retain the employer contribution that is included in the payment received for performing their primary care contract. A House of Commons briefing paper reports that some NHS Trusts are considering solutions such as offering affected staff an increased salary where affected staff opt out of the pension scheme<sup>xiii</sup>. Whilst current public sector reward policy is not to offer additional pay in lieu of pension contributions, we recognise that NHS employers are independent of Government and can take these decisions. However, employers should consider the fairness and value for money of such an approach in the context of their whole workforce.
- 4.4 Staff who have reached their minimum pension age may seek to retire and return where further pension growth is viewed as uneconomic. Retire and return is where individuals have a short break in service, claim their pension and return to NHS service. Except in limited circumstances, the scheme does not apply an abatement to their pension upon returning to work, allowing the individual to draw income from both their employment and pension. Early retirement rates have been increasing, particularly for GPs, though pension tax is likely to be only one amongst several factors in decisions to continue service. The Government Actuary's Department estimates that GPs will, on average, accumulate an NHS pension worth the £1.055 million lifetime allowance limit around the age of 56.
- 4.5 Whilst practices such as the opt-in/opt-out approach can provide flexibility for individuals to manage their pension growth, the Department recognises that a more structural option within the Scheme may be appropriate.

- 4.6 The Government is not considering changes to the pension tax system, though the annual and lifetime allowance policies are kept under review. As explained in Chapter 2, the tax relief limits apply to all pension savers and serve a legitimate purpose. The Government is prepared to consider changing the NHS Pension Scheme rules to give senior clinicians more flexibility over their pensions. However, the extent of any flexibility will need to be considered in context of prudent retirement planning and the fiscal impact, given the funding model for the Scheme.
- 4.7 It should be borne in mind that pension scheme flexibility does not set aside the pension tax system. Measures that reduce pension tax exposure necessarily present a trade-off. For example, reducing pension growth produces a lower pension at retirement but delivers a saving against the annual allowance tax charge and pension contributions. The purpose of any proposed scheme flexibility is therefore to ensure that senior clinicians have the right balance of incentives to continue to provide the services the NHS needs.
- 4.8 The Scheme Advisory Board<sup>xiv</sup> is exploring the case and potential options for pension flexibility in the context of the impact that the NHS Pension Scheme has on the recruitment, retention and productivity of NHS staff. The Board is expected to make recommendations to the Secretary of State in September. This work is important and the recommendations will be considered together with the other responses received through this consultation. The consultation is an opportunity for Government to listen carefully to a range of views before reaching a final proposition that works for both staff and taxpayers.

## **Proposal: a 50:50 option**

- 4.9 Earlier this year as part of the new 5-year GP contract, the BMA and NHS England asked the Government to consider introducing a 50:50 option as an appropriate flexibility.
- 4.10 The option allows the member to voluntarily reduce their NHS Pension Scheme accrual rate by 50% and correspondingly pay 50% fewer contributions. Ancillary benefits such as 'death in service' life assurance and survivor benefits would continue to be provided in full, together with ill-health retirement cover. The highest earning members and their employers currently contribute a combined 35.1% of pay toward their pension, and we anticipate that the 50:50 accrual, including ill-health and other benefits, may cost up to 2/3 of this amount. Final contribution rates will depend on a range of factors and will need to be determined based on the final policy design following consultation.

- 4.11 The Government considers that a 50:50 option appropriately balances the benefit of flexibility with the fiscal impact. The 50:50 option allows clinicians to build up their pension more slowly at a lower cost and reduce their exposure to large regular annual allowance tax charges. Whilst the 50:50 option is primarily aimed at increasing NHS capacity and service delivery by providing clinicians with a further option to manage their annual allowance tax exposure, it is likely that it will also assist with the lifetime allowance because members' pensions will build more slowly.
- 4.12 The membership of the NHS Pension Scheme is varied, and the financial impacts of pension taxation is likely to vary between the differing groups of clinicians. There are several employment models for different clinicians and a diverse range of individual career paths. The Department welcomes views on how the proposals in this consultation document support differing groups of clinicians, whether there are any potential unintended consequences of the proposed flexibility and whether there are any refinements that would assist with its application.

## The effect of 50:50

- 4.13 The potential benefit of 50:50 is that, compared to full-rate pension growth, the annual allowance tax charge is reduced or, in some cases, eliminated. The annual allowance tax charge may otherwise offset some, or all, of the benefit of full-rate pension growth or the extra NHS work performed. In addition to the annual allowance tax charge savings, clinicians would pay 50% fewer member contributions thereby increasing take home pay. Ancillary benefits remain payable in full with cover for the whole year, unlike the opt-in/opt-out approach where there is no cover during the period of opt-out.
- 4.14 To illustrate, the table below shows the effect of 50:50 for a 45-year old consultant with pensionable pay of £102,000 which had increased by 2% from the previous year, and £55,000 of non-pensionable income. The consultant has 14 years of service in the final salary 1995 Section and already accrued annual pension of £5,300 in the CARE 2015 Scheme.

Description	Full accrual	50:50
Amount of annual pension accrued over the year (2015 scheme)	£1,889	£944
Employee contributions (gross)	£13,770	£6,885
Annual allowance tax charge	£2,177	£0
Reduction to annual pension if Scheme Pays used to pay the annual allowance tax charge (existing method, in current terms)	£145	N/A
Total increase in annual pension over the year (before Scheme Pays, for members who meet AA charge directly) <sup>xv</sup>	£2,491	£1,513

Total amount of annual pension accrued (following utilising Scheme Pays) <sup>xvi</sup>	£2,345	£1,513
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- 4.15 For some clinicians, reducing pension accrual by 50% may be insufficient to eliminate an annual allowance tax charge completely. The table below shows the effect of taking up 50:50 on the consultant from example 2 at paragraph 3.4. The consultant has pensionable pay of £153,000, increasing by 2% from the previous year, plus £20,000 of non-pensionable income, £8,000 of accrued annual pension in the 2015 CARE scheme together with 14 years of service in the 1995 section.

Description	Full accrual	50:50
Amount of annual pension accrued over the year (2015 scheme)	£2,833	£1,417
Employee contributions (gross)	£22,185	£11,093
Annual allowance tax charge	£15,150	£1,811
Reduction to annual pension if Scheme Pays used to pay the annual allowance tax charge (existing method, in current terms)	£1,012	£121
Total increase in annual pension over the year (before Scheme Pays, for members who meet AA charge directly) <sup>xvii</sup>	£3,738	£2,271
Total amount of annual pension accrued (following utilising Scheme Pays) <sup>xviii</sup>	£2,726	£2,150

- 4.16 To illustrate the effect of using Scheme Pays to settle the annual allowance tax charge, both tables show the pension value of the Scheme Pays deduction compared to the pension accrued that year. This is presented as a debit in current terms relative to the scheme pension. The debit is revalued (increased) each year by the scheme discount rate of currently 2.4% plus CPI, whereas the annual 2015 Scheme pension is revalued (increased) by 1.5% plus CPI whilst the member is in active service. The increase in annual pension over the year is also shown, after the impact of Scheme Pays. As well as the amount of annual pension accrued over the year, this increase allows for the impact of the revaluation on the CARE pension and the increase in final salary due to the rise in pensionable pay.
- 4.17 Some commentators suggest that the headline interest rate (2.4% plus CPI) for Scheme Pays is unattractive. However, it should be borne in mind that any 2015 scheme pension accrued that year will also be increased annually on a compound basis. When the accrued pension increases are offset against the rate by which the Scheme Pays deduction increases, the effective interest rate of the Scheme Pays 'loan' is 0.9%. A similar offsetting impact is expected to occur for final salary

benefits in the 1995 and 2008 Section, as typically salaries and hence pensions are assumed to increase by at least CPI over the longer term. However, the comparison is more difficult due to the nature of differing individual circumstances, for example promotional salary increases and the number of years to retirement.

- 4.18 Some commentators point out that a 50:50 option leads to a lower pension at retirement. This is a natural consequence of reducing pension growth in preference to incurring large regular annual allowance tax charges. 50:50 would be a new option for clinicians to consider when planning their personal finances. Clinicians will need to make their own personal assessment as to whether their financial interests are best served using 50:50 or continuing full-accrual and using Scheme Pays to settle the tax charge. This will depend on individual circumstances and preferences. As with any financial decisions, seeking appropriately qualified advice is advised.
- 4.19 The generosity of the NHS Pension Scheme means that even with a 50% accrual rate, high-earning clinicians would still build up a pension far larger than most other NHS staff. In the examples above, at 50% accrual the consultant adds £944 or £1,417 respectively to their annual pension (2015 scheme). This is higher than the average annual pension earned across all NHS staff (including clinicians) of approximately £550, based on a single year membership of the 2015 NHS Pension Scheme.
- 4.20 The Government recognises that the 50:50 option does not provide unlimited flexibility for clinicians to target their own personalised level of pension growth and contributions. The Government recognises that some clinicians would prefer a much more flexible approach that is tailored so that each member can maximise their accrual rate whilst reducing or eliminating their annual allowance exposure by having a wider range of options, for example 70% pension contributions for 70% accrual or 20% pension contributions for 20% accrual. The financing model for the Scheme means any flexibility which reduces contribution income has an immediate fiscal impact on the Exchequer, meaning flexibility must be balanced with affordability.
- 4.21 However, 50:50 can be combined with existing scheme options to create further flexibility. Where a 50% accrual reduces pension growth by more than is wished, clinicians and employers can use the contribution savings from 50:50 to buy Additional Pension ("AP") to customise their pension growth incrementally. This would allow clinicians to set a lower accrual rate at the beginning of the year and then supplement their accrual at the end of the year, once they have more clarity over their finances and earnings for the year.
- 4.22 AP can be purchased in units of £250 annual pension. Buying AP is very flexible and purchases can be made by instalments over a variety of time periods or by a

single lump sum payment, so that the pension rights are built up within the same tax year. AP can be purchased by the member, employer, or jointly. The lump sum option allows AP to be purchased late in the year, helping clinicians who are less certain at the start of the year about their prospective earnings.

4.23 Some clinicians may continue to experience annual allowance tax charges even with accrual reduced to 50%. In that scenario, 50:50 reduces the tax charge but does not eliminate it, and we recognise that such individuals may prefer to target an even lower level of pension growth rather than use Scheme Pays to settle the now smaller annual allowance tax charge. A further option for these members could be to introduce a zero-accrual option where members only purchase AP but do not accrue pension benefits in the usual way. This would allow clinicians that find 50:50 to not go far enough to remain members of the NHS Pension Scheme for as long as they are purchasing AP and therefore they would have access to the remainder of the NHS Pension Scheme benefits, for example death in service and ill-health benefits. The Department welcomes views on this.

4.24 The table below shows the effect of using AP in combination with 50:50. The example is the same consultant aged 45 with pensionable pay of £102,000 which had increased by 2% from the previous year, and £55,000 of non-pensionable income. The member has 14 years of service in the final salary 1995 Section and already accrued annual pension of £5,300 in the CARE 2015 Scheme.

	Full accrual	50:50	50:50 + £250 AP purchase	50:50 + £500 AP purchase
Amount of annual pension accrued over the year (2015 scheme)	£1,889	£944	£1,194	£1,444
Employee contributions (gross)	£13,770	£6,885	£9,845 (of which AP costs £2,960)	£12,805 (of which AP costs £5,920)
Annual allowance tax charge	£2,177	£0	£0	£0

4.25 AP purchases are actuarially cost neutral to the scheme but are calculated differently to normal scheme accrual. AP is priced as the expected cost of the future pension being purchased at the time of election. This means older members pay proportionately more than younger members when purchasing AP as there is less time to retirement. This dynamic is mutualised for normal scheme accrual to produce a 'flat rate' where members effectively overpay early in their careers and underpay in later years.

4.26 The Government applies a limit on the total amount of AP a member can buy. This is to protect the public purse from acquiring substantial pension liabilities over and above those built up by members in the normal course of their employment. At present the AP limits are £5,000 of extra annual pension at retirement the 1995/2008 scheme, and £6,761.95 of annual pension for the 2015 scheme for the year 2018-19 rising each year in line with annual Pension Increase orders (which typically apply the rate of CPI). The Department recognises that these limits may affect the longer-term ability for clinicians to supplement their pension accrual where 50:50 is taken up. The Department invites views on whether there is a case for raising these AP limits alongside the introduction of a 50:50 option.

### **Cost of 50:50**

- 4.27 As noted earlier, any flexibility that reduces contribution income and therefore the scheme cashflow, has a fiscal impact on the Exchequer.
- 4.28 The standard practice where departments introduce policy changes which lead to a reduction in AME income<sup>xix</sup> (which is how pension contributions are classified), is for departments to reimburse the Exchequer for those costs – neutralising any fiscal impact.
- 4.29 In line with this, the Department will agree with HMT the extent of any fiscal impact, and explore with NHS England and the Welsh Government an appropriate mechanism for recovering any such cost from the NHS

### **Establishing eligibility and electing to use 50:50**

- 4.30 The previous chapter set out the rationale for targeting pension flexibility at clinicians who are likely to incur an annual allowance tax charge. The Government Actuary's Department advise that it is impractical to set a neat earnings threshold beyond which annual allowance charges uniquely emerge. This is because of the wide variation between individuals of accrual benefits and non-pensionable pay levels.
- 4.31 Instead the Department proposes that eligibility for 50:50 be contingent on meeting two tests. The individual must:
- (a) be employed in a clinical role that requires registration with an appropriate regulatory body; and
  - (b) have a reasonable expectation of breaching their annual allowance.

- 4.32 The Department would issue guidance setting out what evidence the NHS Business Services Authority will require to be satisfied that there is a reasonable prospect of a tax charge. The required evidence is expected to be light touch. It could take the form of a calculator provided via the NHS Pension Scheme website that broadly estimates whether there is a reasonable prospect of an annual allowance tax charge based on the member's projected earnings and their pension accrued from past service. The output from the calculator can then be submitted together with their 50:50 election form to complete the process of taking up the option.
- 4.33 The Department proposes that eligible members make their election to take up 50:50 before the start of the scheme year in which it is to have effect. Once made the election would remain in place for the whole year, with appropriate exceptions made where member income is reduced, for example due to extended periods of leave or moving to part-time hours. This is to ensure the administration effort for 50:50 is proportionate and predictable.
- 4.34 Should the 50:50 proposal proceed, implementation would require substantial preparation in terms of changes to legislation, payroll and pension administration systems, together with communication of the new option to members and employers. The Department expects it would be available by March 2020, ready for the start of the next tax year.

## **Alternative options**

- 4.35 The Department recognises that representations have been made for options other than 50:50 flexibility to be available to members of the NHS Pension Scheme to help manage members' pension tax exposure.
- 4.36 The alternative options that have been suggested by stakeholders include developing the 50:50 flexibility further, as explained above, through the use of AP, zero accrual membership (which allows for death-in-service and ill-health only benefits), graduated pensionable pay rises or more tailored flexibility (e.g. 20:20, 30:30 etc.). The Department is listening to these views and invites responses in relation to ways in which 50:50 can be developed in order to ensure that it will assist the affected group and reduce the negative impact on NHS capacity and service delivery that is created by the interactions between the NHS pension scheme and the tax regime.
- 4.37 However, the Department recognises that respondents may wish to suggest entirely different forms of flexibility, for example using pensionable pay caps to limit pension growth. This could be through a fixed cap on pensionable pay which would limit the amount of pensionable pay a member could have (for example,

£90,000 could be the maximum amount of earnings that would be pensionable for a member of the NHS Pension Scheme). However, it is thought that this may be unattractive for some members as it can limit pension value. It also would not reduce or eliminate annual allowance tax liability for members who are below the pensionable pay cap but still incurring annual allowance tax charges.

- 4.38 Alternatively, it has been suggested by stakeholders that the cap on pensionable pay could be flexible and determined by each individual member. This would be a very flexible approach and members would be able to select the pensionable pay in consultation with their financial advisors. It would, however, be very onerous from a scheme administration point of view and would need to be considered against the fiscal requirements for the scheme.
- 4.39 The Department invites views on alternative options to 50:50 that provide the right balance of incentives for clinicians to continue to provide the services the NHS needs.

#### *Consultation questions*

- 1. Recognising that changes to the pension tax system are not under consideration, does a 50:50 option, combined with the ability to purchase Additional Pension, create the right balance of incentives for clinicians to continue to provide the services the NHS needs? Please set out the reasons for your answer.**
- 2. If not, in what ways could the 50:50 proposal be developed further?**
- 3. Should any refinements be made to the 50:50 proposal in order to account for the different employment models for clinicians and any consequent limitations on how the flexibility will assist particular groups?**
- 4. Are there other changes to the NHS Pension Scheme that Government should consider that provide the right balance of incentives and maintain pensions that are fair to both members and the taxpayer?**

# 5. Improving Scheme Pays

## Scheme Pays

- 5.1 The 'Scheme Pays' facility allows individuals to settle their tax charge without needing to find funds upfront. Scheme members can choose for the NHS Pension Scheme to pay their annual allowance tax charge to HMRC on their behalf. It provides a straightforward way for members to settle their tax charge without needing to find additional funds whilst benefitting from the income tax relief on their pension contributions. The facility can also help reduce Lifetime Allowance charges as the pension is assessed against the Lifetime Allowance after the Scheme Pays deduction is applied.
- 5.2 Scheme Pays is available to all NHS Pension Scheme members, and the Department is interested in making the facility as useful as possible for staff.
- 5.3 The NHS Pension Scheme has two Scheme Pays facilities; mandatory Scheme Pays and voluntary Scheme Pays. Mandatory Scheme Pays is only available when a member's pension input amount is more than the standard annual allowance, their annual allowance charge for the tax year is more than £2,000 and the Scheme Pays election is received by the NHS Business Services Authority (the "BSA") by the Scheme Pays deadline. The 'pension input amount' is the value of real growth in pension benefits over the tax year, once adjusted for inflation.
- 5.4 Alternatively, if a member who does not exceed the Annual Allowance based on pension growth within the scheme, requests a voluntary Pension Savings Statement ("PSS") this must be sent by the later of 6th October following the end of the relevant tax-year or three months after receipt of the request. If all the information has not been received (for example, pay data), then the time limit is the later of 6th October following the end of the relevant tax-year or three months after receipt of the necessary information.
- 5.5 Pension schemes can choose to extend the scope of their Scheme Pays facility to their members where mandatory conditions are not met. This is known as voluntary Scheme Pays. Voluntary Scheme Pays is available to individuals who are members of both the 1995/2008 NHS Pension Scheme and the 2015 NHS Pension Scheme. This facility is available to members who have combined pension input amounts in both schemes which when added together are more than the member's available annual allowance.
- 5.6 Under the mandatory Scheme Pays facility, the liability for making the payment to HMRC, together with any interest and associated penalties should the payment be

made after the self-assessment tax return deadline, is shared between the NHS Pension Scheme and the member. Under voluntary Scheme Pays, the member is solely responsible for payments and liabilities.

- 5.7 In October 2018, the Department announced an extension to the scope of Scheme Pays to cover the payment of tax charges of any amount, including those arising from breaches of the tapered annual allowance. These changes are in effect from tax year 2017-18, meaning a member can elect for the scheme to pay 100% of their annual allowance charge to HMRC on their behalf.

## **Making and amending a Scheme Pays election**

- 5.8 To help members assess their annual allowance liability, the BSA (as scheme administrator) is required to provide members with a PSS if their pension growth within the scheme exceeds the annual allowance in a tax year.
- 5.9 The BSA must issue mandatory statements by the later of 6th October following the end of the relevant tax year, or within three months of all the relevant information being received such as their pensionable pay from their employer. Accordingly, the BSA ask employers to provide the information required to calculate a member's pension input amount by 6 July following the end of the tax year. A member who does not exceed the annual allowance based on pension growth within the NHS Pension Scheme, can request a voluntary statement, which must be provided by the BSA within the same timescales as mandatory statements.
- 5.10 The deadline for a member to make a Scheme Pays election is 31 July of the year following the relevant tax year. The Department wishes to highlight that where a statement is unavailable before the election deadline, this does not mean that the member misses the opportunity to use Scheme Pays for that tax year. Members can make an election using their own estimate of the annual allowance charge. The estimate can be revised at any point for up to four years into the future. For example, members have until 31 July 2022 to change their 2017-18 Scheme Pays election. This practice is acceptable to HMRC.
- 5.11 This flexibility provides members with the latitude to reassess their tax liability and mitigates instances where there is delay or timing issues in BSA receiving the information necessary to produce a statement in good time for the election deadline.

## **Deducting a Scheme Pays charge from pension benefits**

- 5.12 HMRC legislation requires that if a defined benefit pension scheme pays an annual allowance tax charge there must be an adjustment to the member's pension benefits they have accrued. The adjustment must be just and reasonable, having regard to normal actuarial practice.
- 5.13 The accumulated charge is converted into a debit at retirement that is deducted from a member's scheme benefits at retirement, with the interest rate set at the scheme discount rate. The discount rate used to value this reduction for public service pension schemes is the SCAPE discount rate plus CPI.
- 5.14 The SCAPE discount rate reflects the Office for Budget Responsibility's forecasts for long-term GDP growth, in line with established methodology. Due to recent changes to the SCAPE rate and CPI, the Scheme Pays discount rate has fallen this year to 4.8%.
- 5.15 The interest rate therefore corresponds to the rate of return foregone by the Scheme on the money it had paid to HMRC on behalf of the member. It is important that Scheme Pays is cost neutral to the NHS Pension Scheme, otherwise members and employers subsidise the tax charges of high-earning individuals.
- 5.16 At present the value of the Scheme Pays charge plus any compounding interest is rolled up and deducted from the value of the member's pension at retirement. The Department is considering the possibility of switching to a debit method, where the value of the charge for a scheme year is deducted from the value of a member's pension at the time the charge is paid.

## **Proposed change to Scheme Pays approach**

- 5.17 All public service pension schemes have a Scheme Pays facility. However, schemes have the option to decide which Scheme Pays approach they implement. There are two methods used across public sector schemes: the 'notional defined contribution pot' (the "NDC") method, and the 'debit' method.
- 5.18 The NHS Pension Scheme uses the NDC method. This is where the Scheme meets the cost of the annual allowance tax charge in the scheme year it occurs. There is no immediate adjustment to the value of a member's pension benefits, but the value of the annual allowance tax charge (plus the compounding interest) is converted to a pension amount at retirement. At that stage the amount is deducted from the value of the member's pension at retirement.

- 5.19 Alternatively, the 'debit' method is used by other public sector pension schemes. The calculation involved in this method is similar to the way the NHS Pension Scheme calculates a partitioning of pension rights upon divorce. Under this method, the pension value of the annual allowance tax charge is deducted from the value of the member's pension in the year it occurs, rather than at retirement, using a conversion factor reflecting the Scheme Pays discount rate. The debit is increased by the rate specified in [Pension Increase Orders](#) (typically the rate of CPI) each year to retirement and members are able to see the value of their pension minus Scheme Pays deductions on their annual benefit statements.
- 5.20 When the Scheme Pays facility was first introduced, it was concluded that the NDC method was the most suitable for the NHS Pension Scheme given the high number of NHS Pension Scheme members affected by the annual allowance who could request Scheme Pays, and the burden this would place on the scheme administrator. The NHS Pension Scheme is the largest of all the public service pension schemes and has the greatest number of higher earners who are likely to be within scope of an annual allowance tax charge. It also simplified the IT requirements around Scheme Pays at a time when the scheme administrator was under pressure to provide IT functionality to calculate the pension input amounts for all scheme members.
- 5.21 The Department is listening to concerns that some members are unaware of the impact that Scheme Pays charges and the compounding interest will have on their pension benefits at retirement. The debit approach would allow members to see the effect 'in real time', delivering greater transparency over their pension benefits and pending Scheme Pays charges. The expectation is that this clarity would support better informed financial planning and decision-making by members.
- 5.22 The Department is therefore considering changing the method of Scheme Pays charge deduction from the current NDC approach to the debit method. This would bring the NHS Pension Scheme into line with other public sector pension schemes, and make deductions more transparent and easier to understand. However, there is a marginal difference between the two methods in terms of the likely size of Scheme Pays deduction at retirement. The Government Actuary's Department calculate that the current NDC method might be expected to produce an overall Scheme Pays deduction at retirement age around 2% lower than the debit approach. The difference can vary depending on a member's individual circumstances, such as age when the debit arises and retirement date.
- 5.23 The difference arises from the timing for applying the SCAPE discount rate and the deferred revaluations under the two approaches. For example, under the current NDC approach, the interest only applies from the January following receipt of the Scheme Pays election (e.g. January 2021 for the 2018-19 tax year),

whereas under the debit approach, the interest is built into the factor which is calculated at the end of the tax year.

- 5.24 To illustrate, a 40-year old member incurs annual allowance tax charges in 2018-19 of £10,000 arising from their 1995 Section service and a further £10,000 charge for the 2015 Scheme service. The member elects to meet both charges through Scheme Pays. The member retires at age 60 drawing benefits from both schemes, with an early retirement reduction applying to their 2015 Scheme benefits.
- 5.25 The table below shows the Scheme Pays deductions to the annual pensions. A deduction of three times the pension deduction would also apply to the 1995 Section lump sum under both the debit and the NDC approach.

Scheme pays deduction to annual pension at assumed retirement age	1995 Section	2015 Scheme	Total
Debit approach	£942	£1,062	£2,005
NDC approach (current)	£914	£1,046	£1,960
Difference	£28	£17	£45

- 5.26 This example assumes that there are no changes in SCAPE rate or the factors between incurring the charge and the member retiring at age 60. Any such changes would affect the Scheme Pays deduction through the current NDC approach but not through the debit approach. Accordingly, the two approaches might be considered to deliver a similar reduction at retirement.
- 5.27 The Department invites views on the merits and desirability of changing the approach to Scheme Pays deductions implemented in the NHS Pension Scheme.

*Consultation question*

**Do you think that the NHS Pension Scheme should discontinue the NDC approach to Scheme Pays deductions in preference to adopting the debit method? Please set out the reasons for your answer.**

# 6. Equality Impact Assessment

## The equality duty

- 6.1 The public sector equality that is set out in the Equality Act 2010<sup>xx</sup> requires public authorities, in the exercise of their functions, to have due regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not.
- 6.2 This chapter sets out the Department's initial assessment of the proposals and its consideration of the public sector equality duty. This preliminary assessment will be kept under review and the Department invites comments and evidence that are relevant to the public sector equality duty so that further analysis of equality issues can be undertaken.
- 6.3 The data used in this chapter is included at Annex A and details the annual earnings of Hospital and Community Health Service ("HCHS") staff between January and December 2018 split to under £90,000 and £90,000 or more, partitioned to staff group and protected characteristics as at 31 December 2018, in NHS Trusts and CCGs in England. The data is taken from the Electronic Staff Record system and is broken down by age, disability, ethnicity, religious beliefs, sex and sexual orientation.
- 6.4 The data considered in this chapter does not include staff who are working in Wales or for employers other than NHS Trusts and CCGs. Notably, the data does not include GPs or dental practitioners, as primary care organisations tend not to participate in the national Electronic Staff Record system from where the data is drawn.
- 6.5 The Department invites views on issues relevant to the public sector equality duty, including views and evidence that are outside the data set.

## Targeting

- 6.6 The aim of introducing pension flexibility into the NHS Pension Scheme is to give members an option to reduce the likelihood that they will incur large, regular annual allowance tax charges without requiring them to reduce their hours, not take on extra responsibilities or leave the pension scheme. The aim of the policy is to prevent the reduction of capacity in the NHS due to highly qualified clinicians leaving the workforce, turning down additional responsibilities or reducing their commitment to the NHS in order to manage their tax exposure.
- 6.7 The NHS Pension Scheme is an important means of retaining staff in NHS service and the Department understands that high-earning clinicians are reducing their hours, declining extra sessions or retiring early in preference to incurring an annual allowance tax charge. The aim of providing flexibility is not to advantage high earning members but instead it is to neutralise or mitigate a disadvantage of continuing current working patterns or taking on further work whilst remaining a member of the NHS Pension Scheme.

### **Targeting high-earners with a reasonable expectation of incurring an annual allowance tax charge**

- 6.8 As explained in Chapter 3, lower earners would be very unlikely to incur an annual allowance tax charge and therefore do not fall within the scope of the Department's policy aim: preserving NHS capacity by attenuating the disincentive to perform the services that the NHS needs because of their tax position. Whilst lower earners would be unable to pay reduced contributions for a reduced pension benefit and consequently benefit from increasing their take-home pay, this is not the aim of the policy. Instead, the ability to increase take-home pay is an effect of members utilising 50:50 to manage their annual allowance tax exposure. However, given that, under a targeted approach, low earners will not be able to increase their take-home pay in a similar manner, the Department is considering the equality implications of restricting 50:50 flexibility to members with a reasonable expectation of incurring an annual allowance tax charge.
- 6.9 The data set uses £90,000 as the start of the salary ranges that are considered more likely to contain members affected by the annual allowance. It is considered that a threshold of £90,000 allows for some headroom for non-pensionable pay that will affect annual allowance calculations once the taper threshold of £110,000 has been passed. Whilst it will not reflect every member identified, it gives the Department an indication of the groups of staff that are more likely to be affected.
- 6.10 High earners are statistically more likely to be older members of the NHS Pension Scheme and therefore issues of age discrimination should be considered, for

example 75% of HCHS doctors aged 50-54 earn over £90,000 compared to 2% of HCHS doctors aged 30-34. This is reflected, although not quite as severely, across the rest of the workforce. 6.24% of staff aged 50-54 earn over £90,000 compared to only 0.28% of staff aged 30-34. Consequently, the annual allowance tax charge is more likely to affect older staff because they are more likely to be high earners. The aim of the proposals is to provide flexibility to those members who have a reasonable expectation of receiving an annual allowance tax charge, regardless of their age.

- 6.11 Additionally, high-earners are also statistically more likely to be male, with 12.7% of male HCHS staff earning over £90,000 as at 31 December 2018, compared to 1.7% of female staff. High-earners are also less likely to be disabled, with 1.1% of disabled staff earning over £90,000. The Department also notes that 13% of Chinese and 12.8% of Asian or Asian British members of staff in NHS Trusts and CCGs in England earn over £90,000. 19.7%, 19.2%, 12% and 9.4% of members of staff who state their religion is Hinduism, Jainism, Judaism and Islam, respectively, earn over £90,000.
- 6.12 Therefore, if one of the conditions of being able to take up the 50:50 option is a reasonable expectation of receiving an annual allowance tax charge by virtue of their high-earnings, then these groups of staff are more likely to fall within the scope of the proposed flexibility than other groups. This is because, using staff earning over £90,000 as an indication of the likely groups of staff that will receive annual allowance tax charges, more male staff than female staff earn over £90,000 and therefore are more likely to build up pensions at a rate which exceed their annual allowance. It is noted that a higher proportion of Chinese or Asian British staff are likely to earn over £90,000. Additionally, a higher proportion of staff who believe in Hinduism, Jainism, Judaism and Islam earn over £90,000 than staff with other or no religious beliefs.
- 6.13 The aim of the policy is not to advantage specific groups, it is to mitigate the impact of the annual allowance on NHS capacity. On the information currently available, the Department considers that it is reasonable and proportionate to the aim to target flexibility to high-earners only as they are the group affected by the annual allowance tax.
- 6.14 More detailed breakdowns of staff in CCGs and NHS Trusts in England, who earn more than £90,000 is contained in the Annex to this consultation document. The data is broken down by age, disability, ethnicity, religious beliefs, sex and sexual orientation. Similar data is not currently available for other NHS staff groups, for example GPs or NHS staff working in Wales.

## Targeting clinicians

- 6.15 The aim of the policy is to preserve NHS capacity by attenuating the disincentive for staff to perform the services that the NHS needs because of their tax position. Providing high-earning clinical staff with the ability to accrue pension benefits more slowly and therefore help manage their annual allowance tax exposure would strengthen the incentive for them to remain within the workforce, deliver extra work and take on further responsibilities.
- 6.16 Clinical staff made up 53.6% of the workforce in NHS Trusts and CCGs in England on 31 December 2018. This information does not include other NHS workforce groups, such as GPs or staff working in the Welsh NHS. Younger members of the workforce in NHS Trusts and CCGs in England are more likely to work in clinical roles. On 31 December 2018, 43% of 25-year olds in the workforce held a clinical role. However, this sharply increases and is likely to be related to medical training. In the 25-29 age bracket, 62.8% held clinical roles.
- 6.17 Older members of the workforce are also statistically less likely than average to work in clinical roles; 44.2% of 55-59-year olds, 35.7% of 60-64-year olds and 30.2% of over 65s are in clinical roles. Therefore, members of staff working for NHS Trusts and CCGs who are over 55 are more likely to work in non-clinical roles and would not qualify for flexibility under the current proposal. However, one reason for there being less clinicians over 55 could be due to clinicians retiring earlier than their normal pension age and therefore leaving the NHS workforce. As discussed earlier in the consultation document, regularly exceeding pension tax thresholds has been highlighted as a factor in decisions to retire early. By enabling this group to build up their pension benefits more slowly, it may be that more clinicians are retained within the workforce and increase NHS capacity.
- 6.18 The proportion of staff in clinical roles also varies by ethnicity, with 79% of Chinese staff, 70.4% of staff from ethnic groups other than those available for the equality data and 66.7% of Asian or Asian British staff holding clinical roles. For staff with religious beliefs, 73% of staff who believe in Judaism, 70.6% of staff who believe in Jainism and 69.3% of staff who believe in Hinduism work in clinical roles.
- 6.19 The Department's initial assessment is that it is reasonable and proportionate to the aim to restrict the flexibility to clinical roles unless evidence is provided that the tax position of non-clinical staff members is leading to a reduction in NHS service capacity.
- 6.20 More detailed breakdowns of clinical and non-clinical staff in CCGs and NHS Trusts in England is contained in the Annex to this consultation document. The data is broken down by age, disability, ethnicity, religious beliefs, sex and sexual

orientation. Similar data is not currently available for other NHS staff groups, for example GPs or NHS staff working in Wales.

## **Targeting clinicians with a reasonable expectation of incurring an annual allowance tax charge**

- 6.21 Whilst the analysis above considers members with annual allowance tax exposure and clinicians separately, it is also important to understand the implications of targeting clinicians who have a reasonable expectation of incurring an annual allowance tax charge. Again, earnings of over £90,000 have been used as an indication of staff groups that are most likely to have the potential to exceed their annual allowance. Over the total staff working within NHS Trusts and CCGs in England, 3.9% are clinicians earning over £90,000.
- 6.22 The proportion of male staff who work in clinical roles and earn over £90,000 is 12%, which is higher than average. Conversely, only 1.47% of women working in the NHS Trusts and CCGs are in clinical roles and earn over £90,000.
- 6.23 Disabled members of the workforce are less likely to be in clinical roles earning over £90,000 as only 0.96% of disabled members of staff in the data set earn over £90,000 in a clinical role.
- 6.24 Similar to the earlier analysis, younger members of the workforce are less likely to be in clinical roles earning over £90,000, with 0% of under 25s, 0.01% of 25-29 year olds and 0.25% of 30-34 year-olds in clinical roles earning over £90,000. Again, this can be partly explained due to the career progression and medical training expectations highlighted above.
- 6.25 Chinese and Asian or Asian British members of staff are more likely to earn over £90,000 in clinical roles as 12.93% and 12.65%, respectively, are in clinical roles and earn over £90,000. Conversely, Black or Black British and White members of staff in the data set were less likely to earn over £90,000 in clinical roles as only 2.19% of Black or Black British and 2.79% of White staff members were in clinical roles and earning over £90,000.
- 6.26 Whether staff are more likely to be in high-earning clinical roles also varies by religious belief. Staff who state their religious beliefs to be Hinduism, Jainism, Judaism and Islam are more likely to be in clinical roles earning over £90,000, with 19.61%, 18.77%, 11.33% and 9.27%, respectively, of those groups employed in clinical roles earning over £90,000.
- 6.27 These groups are more likely to be working in clinical roles and earn £90,000. Consequently, they are more to incur an annual allowance tax charge and

therefore the Department is considering providing them with a 50:50 option. As explained above, it is not intended that there will be a general flexibility for all senior clinicians earning over £90,000 but the current proposal is that the 50:50 option would be available to clinicians with a reasonable expectation of incurring an annual allowance tax charge. The Department's initial assessment is that this is reasonable and proportionate given that these groups are particularly likely to have the ability to reduce their hours, turn down extra responsibilities or retire early in order to manage their tax liability.

- 6.28 More detailed breakdowns of staff in CCGs and NHS Trusts in England, who earn more than £90,000 is contained in the Annex to this consultation document. The data is broken down by age, disability, ethnicity, religious beliefs, sex and sexual orientation. Similar data is not currently available for other NHS staff groups, for example GPs or NHS staff working in Wales.

## **50:50 option**

- 6.29 One of the aims of the public sector equality duty is to advance equality of opportunity between those who share a protected characteristic and those who do not. The nature of the proposed flexibility is that high earning clinicians will pay a half rate of contributions in exchange for accruing half the pension benefits. Whilst the aim of the policy is not to advantage high earning members but instead it is to attenuate the disincentive to perform the services that the NHS needs because of their tax position, a consequence of this is that their take-home pay will increase. Given that lower earners are more likely to be constituted from groups with protected characteristics (for example, younger members, women, disabled staff, staff with certain religious beliefs or are part of particular ethnic groups), the Department would like to further consider the fact that, by offering 50:50 flexibility to high earners only, the difference in take-home pay between low and high earning members is likely to increase. There is a potential argument that this increases the potential take-home pay gap between members from groups with protected characteristics and other members. However, this is balanced against the fact that high earners would be purchasing a lower pension and therefore the gap in pension income for these two groups is likely to reduce.
- 6.30 Whilst not central to the policy aim of 50:50, lower earners are a group that may benefit from the ability to opt for 50:50 flexibility, reducing their pension contributions and therefore increasing their take-home pay (without opting out of the pension scheme entirely) and making membership of the pension scheme more affordable. However, these changes should be considered within the scheme architecture as a whole and it is established policy that lower earners receive a reduction in their contribution rate in order to make pension contributions more affordable. The contribution rate is 5% of earnings for the lowest earning

members and the average contribution rate required across the scheme is 9.8% and the rate for the highest earning members is currently 14.5%. This is established pension policy and seeks to make the scheme more affordable to NHS employees with lower incomes.

6.31 Should the Department not make the proposed amendments to the NHS Pension Scheme, the maintenance of the status quo will impact on those with protected characteristics identified above, particularly men, older members, those with certain religious beliefs or that are part of particular ethnic groups. Consequently, there is a risk that these groups are likely to face annual allowance tax charges and thus choose to leave the NHS workforce.

6.32 Therefore, the Department's initial assessment is that a 50:50 flexibility is a measure which is reasonable and proportionate to the aim, although it will continue to consider any potential equality impacts that arise through consultation and further analysis.

## **Scheme Pays**

6.33 The Department's initial assessment is that a move to the debit method would not impact on any protected characteristics. However, the Department invites evidence of any impact that such a change might have in this regard.

### *Consultation questions*

**1. To what extent will the proposal to target the flexibility to high-earning clinical staff have an impact on people with one or more protected characteristics?**

**2. To what extent will the proposal to provide a 50:50 option have an impact on people with one or more protected characteristics?**

**3. Are there any further equality considerations that the Department should be aware of from groups outside the data set?**

**4. To what extent would adopting the debit method for Scheme Pays have an impact on one or more protected characteristics?**

## 7. Conclusion

- 7.1 The Government understands that some members of the NHS workforce are taking action to reduce their tax liability in response to exceeding their annual allowance for tax-free pension saving. The Government is concerned that high-earning clinicians are reducing their workload, turning down extra work and responsibilities or retiring early which has a consequential impact on NHS capacity and delivery of NHS services.
- 7.2 Whilst there are informal ways in which affected members can reduce their tax liability (for example, opting-in and out of the NHS Pension Scheme), these have disadvantages for members and the Department recognises the benefit of providing a more structural approach within the scheme rules.
- 7.3 The annual allowance serves a legitimate purpose and the Government is not considering changes to the pension tax system. However, the Government is prepared to change the rules of the NHS Pension Scheme to make it more flexible for clinicians who are likely to incur an annual allowance tax charge. The consultation proposes a 50:50-type model through which clinicians can reduce their pension accrual by 50% accrual and pay 50% fewer contributions.
- 7.4 The Government recognises that a 50:50 option does not provide unlimited flexibility for clinicians to target their own personalised level of pension growth and contributions. The financing model for the Scheme means any flexibility which reduces contribution income has an immediate fiscal impact on the Exchequer, meaning flexibility must be balanced with affordability.
- 7.5 The option to purchase Additional Pension is part of the NHS Pension Scheme structure. 50:50 can be combined with existing scheme options to create further flexibility through the purchase of Additional Pension to top up pension accrual where a 50% accrual reduces pension growth by more than is wished.
- 7.6 The Department recognises that some clinicians may continue to experience annual allowance tax charges even with accrual reduced to 50%. In that scenario, 50:50 reduces the annual allowance tax charge but does not eliminate it, and we recognise that such individuals may prefer to target an even lower level of pension growth rather than use Scheme Pays to settle the now smaller annual allowance tax charge. In order to ensure that Scheme Pays operates with as much clarity and transparency as possible, this consultation document explains the two different methods of calculating Scheme Pays charges. The Department welcomes views on this, particularly in relation to ensuring the Scheme Pays facility is clear and transparent for affected members and their financial advisors.

## **Next steps**

- 7.7 The Department invites responses to the consultation questions set out in this document.
- 7.8 Following the conclusion of the consultation period, the Department will review and consider the responses to the consultation document. As part of this, the Department will also take into consideration recommendations made by the Scheme Advisory Board. A consultation response will be published which will respond to views received and set out how Government will proceed.
- 7.9 Should legislative amendments be required to implement any pension flexibility that is pursued following this consultation, there will be a further consultation period for stakeholders and the public to consider and comment on the detailed specific legislative changes proposed.

# Annex

Data contained in this annex is for staff working in NHS Trusts and CCGs in England as at 31 December 2018. Similar data is not currently available for other NHS staff groups, for example GPs or NHS staff working in Wales.

The data is taken from the Electronic Staff Record system and is broken down by age, disability, ethnicity, religious beliefs, sex and sexual orientation. Data for other protected characteristics has not been available for the purpose of this consultation document.

## Summary tables

The overall percentage of staff in the data set earning over £90,000 is 4.22%.

The overall percentage of clinical staff in the data set is 53.6%.

The overall percentage of staff that are in clinical roles and earning over £90,000 is 3.90%

Age	Proportion earning over £90,000	Proportion that are clinical staff	Proportion that are clinical staff earning over £90,000
Under 25	0.00%	43.01%	0.00%
25-29	0.01%	62.81%	0.01%
30-34	0.28%	61.66%	0.25%
35-39	2.93%	59.62%	2.78%
40-44	6.56%	61.64%	6.27%
45-49	6.78%	55.76%	6.30%
50-54	6.24%	51.09%	5.59%
55-59	5.42%	44.18%	4.90%
60-64	3.96%	35.67%	3.71%
Over 65	4.16%	30.23%	4.10%

Disability	Proportion earning over £90,000	Proportion that are clinical staff	Proportion that are clinical staff earning over £90,000
Disabled	1.12%	49.4%	0.96%
Not Disabled	3.66%	53.9%	3.35%
Not Disclosed	6.17%	53.0%	5.80%
Unknown	5.85%	53.4%	5.56%

Ethnicity	Proportion earning over £90,000	Proportion that are clinical staff	Proportion that are clinical staff earning over £90,000
White	3.15%	51.2%	2.79%
Mixed	5.61%	56.3%	5.41%
Asian or Asian British	12.77%	66.7%	12.65%
Black or Black British	2.27%	55.1%	2.19%
Chinese	13.05%	79.1%	12.93%
Any Other Ethnic Group	6.82%	70.4%	6.8%
Not Stated	5.85%	55.4%	5.32%
Unknown	3.79%	54.1%	3.12%
Discontinued codes	8.39%	66.8%	8.39%

Religious beliefs	Proportion earning over £90,000	Proportion that are clinical staff	Proportion that are clinical staff earning over £90,000
Atheism	3.14%	57.7%	2.78%
Buddhism	6.85%	63.4%	6.66%
Christianity	2.31%	53.0%	2.02%
Hinduism	19.75%	69.3%	19.61%
Islam	9.39%	59.8%	9.27%
Jainism	19.17%	70.6%	18.77%
Judaism	11.98%	73.0%	11.33%
Sikhism	4.56%	44.8%	4.32%
Other	1.47%	46.8%	1.30%
Not Disclosed	5.78%	53.2%	5.38%
Unknown	6.59%	52.3%	6.25%

Sex	Proportion earning over £90,000	Proportion that are clinical staff	Proportion that are clinical staff earning over £90,000
Male	12.70%	54.0%	12.00%
Female	1.67%	53.5%	1.47%

Sexual orientation	Proportion earning over £90,000	Proportion that are clinical staff	Proportion that are clinical staff earning over £90,000
Bisexual	1.59%	53.2%	1.49%
Gay or Lesbian	3.00%	57.1%	2.29%
Heterosexual or Straight	3.23%	53.8%	2.94%
Not Stated	6.22%	53.6%	5.85%
Other sexual orientation	0.00%	60.0%	0.00%
Undecided	0.00%	64.6%	0.00%
Unknown	6.61%	52.3%	6.27%

# Endnotes

<sup>i</sup> These figures were calculated using data as at 31 March 2015 with the intention of demonstrating the pensions that would be coming into payment. The figures are an estimate of likely retirements based on 1995 Section active members aged 59 and over, and 2008 active members aged 64 and over.

<sup>ii</sup> [Mean annual basic pay per Consultant FTE. NHS Staff Earnings Estimates - December 2018 \(Provisional Statistics\)](#)

<sup>iii</sup> CARE: Career Average Revalued Earnings

<sup>iv</sup> Including in-service re-valuation and salary link

<sup>v</sup> See endnote iv

<sup>vi</sup> See endnote iv

<sup>vii</sup> See endnote iv

<sup>viii</sup> Including in-service re-valuation and salary link. The an above-inflation pay rise results in an increase to the consultant's lump sum and therefore lump sum figures have also been provided for clarity

<sup>ix</sup> See endnote viii

<sup>x</sup> Including in-service re-valuation and salary link. The an above-inflation pay rise results in an increase to the consultant's lump sum and therefore lump sum figures have also been provided for clarity

<sup>xi</sup> See endnote x

<sup>xii</sup> [GP Partnership Review: Final Report](#)

<sup>xiii</sup> [House of Commons Briefing Paper number CBP-5091 10 June 2019](#)

<sup>xiv</sup> The Scheme Advisory Board is a statutory board, comprising representatives from NHS trade unions and employers, that advises the Secretary of State for Health and Social Care on the desirability of making changes to the NHS Pension Scheme.

<sup>xv</sup> This figure includes the revaluation on the CARE pension and the increase in the final salary pension benefits due to the rise in pensionable pay.

<sup>xvi</sup> See endnote xv

<sup>xvii</sup> See endnote xv

<sup>xviii</sup> See endnote xv

<sup>xix</sup> AME is "annually managed expenditure" and is expenditure on programmes which are demand led and more difficult to predict. These are set annually outside the Spending Review and typically relate to spend on areas such as welfare, tax credits or public sector pensions

<sup>xx</sup> Equality Act 2010, section 149

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