



Department
of Health

The draft National Health Service Pension Scheme (Amendment) Regulations 2014

Consultation document & explanatory notes

Contents

Introduction & how to respond	3
1: Scheme access for Independent Providers of NHS clinical services	4
2: Increase to employee contributions from 1 April 2014	25
3: Lifetime Allowance Limit: Fixed & Individual Protections 2014.....	31
4: Miscellaneous & technical amendments	33

You may re-use the text of this document (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/

© Crown copyright

Published to gov.uk, in PDF format only.

www.gov.uk/dh

Introduction & how to respond

The Department of Health has published for consultation a draft Statutory Instrument titled: The National Health Service Pension Scheme (Amendment) Regulations 2014.

This document explains the purpose and effect of the provisions set out in the draft Statutory Instrument. It should be read in conjunction with the draft Statutory Instrument which is attached separately as an annex. It is also available via the NHS Business Service Authority's website: www.nhsbsa.nhs.uk/Pensions

The draft Statutory Instrument proposes changes to existing NHS Pension Scheme regulations in the following ways:

- Section 1: Introduction of new scheme access requirements for Independent Providers of NHS clinical services
- Section 2: Increase to employee contributions from 1 April 2014
- Section 3: Accommodation of the HMRC Fixed & Individual Protection 2014 facilities
- Section 4: Making other miscellaneous & technical amendments

Comments on the proposed changes, including answers to the specific questions posed at paragraph 1.19 below, and on the draft Statutory Instrument itself (attached separately as Annex A) can be submitted via email to:

nhsregsapr14@dh.gsi.gov.uk

or by post to:

NHS Pensions Policy Team
Department of Health
Room 2W09 Quarry House
Quarry Hill
Leeds LS2 7UE

The consultation will close on 10th February 2014.

1. Scheme access for Independent Providers of NHS clinical services

Introduction

- 1.1 The Health and Social Care Act 2012 marked a key stage in the development of greater patient choice through delivery of NHS services from a wider range of providers. Patients and service commissioners will increasingly be able to choose the best and most effective setting for NHS services, and this will include both the traditional NHS organisations and GP practices, and an expanding range of Independent Providers (IPs) including private sector providers, social enterprises, charities etc.
- 1.2 However, the 'pensions playing field' has until now been tilted away from the new IP providers and towards the NHS, with the latter able to join staff in the defined benefit NHS Pension Scheme (NHSPS) at relatively low employer cost, and IPs unable to join NHSPS and facing up to double the cost to provide "broadly comparable" pensions.

New Fair Deal

- 1.3 The Government's reforms to the Fair Deal policy, introduced in October 2013, will do much to level the NHS Pensions playing field. IPs will now be able to meet compulsory transfer obligations through NHSPS at the same cost as NHS organisations, for staff remaining wholly or mainly engaged in NHS work. However, reforms to Fair Deal alone will be insufficient to encourage the greater staff mobility required for a truly plural NHS market, focussed on patients. For these reasons, the proposed final NHS agreement on 2015 pension scheme reforms, affecting all public service schemes, included a commitment to review NHSPS access for new providers of NHS clinical services.

NHS Pension Scheme Access review

- 1.4 The NHSPS Access review has been carried out by the Staff Passport Group, which includes representatives working in partnership from the Department of Health, HM Treasury, NHS and Independent Sector Employers, and the NHS Trades Unions.

Key aims have been to:

- Support the reforms to Fair Deal and a fairer pensions playing field by opening NHSPS to all employers engaged in providing NHS clinical services;
- Encourage more flexible services for patients, by helping staff retain NHSPS membership when they move around the health sector and remain wholly or mainly engaged in NHS work;

- Avoid a pensions “race to the bottom” by maintaining NHSPS membership levels and contribution income over the long term;
- Protect taxpayers and the NHSPS through improved controls affecting all NHS employers

Using new IP Scheme Access to build on New Fair Deal

- 1.5 Subject to suitable controls and a careful post-implementation review of the new access arrangements, Ministers have approved the Staff Passport Group’s recommendation that NHSPS should be extended to new IPs. Comments are invited on the attached draft NHSPS Amendment Regulations, effective from 1 April 2014, subject to Parliamentary process.

Summary of new IP access arrangements

- 1.6 IPs who are not already NHSPS employers and can meet access criteria will be able to apply to NHS Pensions to join eligible employees, even those who move to the IP’s employment voluntarily.

IP options

- 1.7 IPs will be able to opt for NHSPS Access at one of three levels:

Level 1 – Scheme Direction access only, for those IP staff with a Fair Deal obligation

Level 2 – Closed IP employer access, for those staff with previous entitlement to NHSPS within 12 months of joining the IP

Level 3 – Open IP employer access, for all of an IPs eligible employee’s

- 1.8 A level 1 or 2 access choice will apply to all of an IP’s NHS contracts for clinical services, to ensure equal pensions and pay treatment and ease of administration.

- 1.9 Although IPs joining the NHSPS as employing authorities will normally be expected to be doing so for the long term, regulations will provide for any IP who needs to change their access position to do so, subject to criteria. IPs will be able to:

- Choose level 1 initially but later ‘upgrade’ to level 2 or 3 access
- Choose level 2 access, but later give 6 months’ notice of reversion to level 1 access, or

- Choose level 1 access, and later give 6 months' notice of complete withdrawal from IP employer status for new recruits

Cost of new IP access

- 1.10 The new access to NHSPS will cost IPs the same as it does for all other NHSPS employers – employer contributions are currently 14%.

Pension benefits built up by IP employees

- 1.11 From April 2015, most IP and other scheme members will begin to build up NHSPS pension benefits in a new career average system developed in accordance with the recommendations of the Independent Public Service Pensions Commission, chaired by Lord Hutton. However, between 1 April 2014 and 31 March 2015 most IP employees who become scheme members will build up pensions on the existing final salary basis.
- 1.12 Some IP scheme members who have enjoyed NHSPS membership previously and were within 10 and 13.5 years of their normal pension age on 1 April 2012, may be “protected” and be able to remain in the current 1995 or 2008 sections of the scheme, there is more information about this on the NHS Pensions website.

NHSPS benefits payable including redundancy pensions

- 1.13 IP scheme members will become entitled to broadly the same personal and dependents benefit package available to other scheme members. This will include NHSPS redundancy pensions for IPs who choose to provide them for their staff and pay upfront the capitalised lump sum representing the cost of early payment.

IP employing authority joining rules

- 1.14 IPs who want the NHSPS level 2 or 3 access described at paragraph 1.9 above will need to:
- Apply to the Secretary of State (normally NHS Pensions) for IP employer status from a forward date
 - Hold one or more NHS standard or APMS contracts to provide NHS clinical services
 - Automatically join in the NHSPS all their eligible staff
 - Confirm that they are seeking NHSPS access primarily for employees who are engaged in the delivery of NHS clinical services (note that essential ‘back office’ staff, e.g. record-keeping and reception staff, who support that delivery will also be eligible to join NHSPS)

- Arrange a “contribution guarantee” (i.e. a ‘bond’) with selected banks and other institutions, to provide cover for their estimate of 3 months’ NHSPS employee and employer contributions, including a 10% margin for growth
- Provide, and regularly update, pay, pensions and work details to NHS Pensions

Financial controls specifically for new IPs

- 1.15 It will be important to ensure that the taxpayer and existing NHS employers are protected when access to the pension scheme is extended to new IPs. In simple terms this means that the full cost of extending the NHSPS to staff working in IPs on NHS work should be borne by those new employers and their staff.
- 1.16 IP roll-out data will be closely monitored to help achieve this aim and in addition there will be new IP specific controls:
- **“Wholly or mainly condition”** - IP employees who will be able to join the NHSPS must be “wholly or mainly” engaged (i.e. for more than 50% of their time) in providing NHS clinical services. IP employees who work wholly or mainly on non-NHS work will be unable to join NHSPS
 - **“75% pensionable pay threshold”** – new IP organisations will be allowed to pension up to, but normally no more than, 75% of their gross income from NHS clinical services contracts. IPs unable to justify their excess pensionable pay over 75% will normally be required to pay a scheme contribution surcharge on the excess, of 26%
 - **“NHS Pensions spot checks”** – of individual IP NHSPS pension records, for example, where pensionable pay for particular IPs, or for particular individuals, appears unusually high. The regulations will authorise the Secretary of State (normally NHS Pensions) to call for additional information from IPs and to make spot checks if necessary. Evidence of an IP’s non-compliance with new access or other scheme regulations may lead to the adjustment of individual pensionable pay figures and/or the termination of the IP’s NHSPS employing authority status

Controlling NHSPS membership via secondment following the introduction of IP Access

- 1.17 From 1 April 2014, arrangements by which NHSPS employers can currently retain scheme membership for staff by seconding them to a non-NHS organisation will end, if those staff could now become scheme members using new IP Access.

New Scheme controls affecting both IPs and other NHSPS employers

- 1.18 **From 1 April 2014**, to facilitate IP employer access whilst protecting taxpayers and the scheme, some new controls will apply to all NHSPS employers:
- Existing powers allowing consideration of a contribution guarantee ‘bond’ for certain employers who fail to pay their scheme contributions during NHSPS membership will

be strengthened. NHS Pensions will in future be able to consider the use of a bond for employers with a *previous history* of non-payment

- Administration charges and interest will be introduced for NHSPS employers who pay their scheme contributions late. However, employers will not pay any interest or administration charges if they pay their scheme contributions by the existing due dates, e.g. the 19th day of the month following deduction, for regular employee and employer contributions
- For members of the NHSPS 1995 section final salary arrangement only, employers will be charged for the cost of pension benefits (but not death benefits) calculated on any pay increases they make, which are greater than a new 'cap' equal to the level of the consumer prices index (CPI) + 4.5%. The employer charge will apply to 'over cap' increases in one or more of the final 3 years prior to retirement. Member benefits will continue to be calculated on full, 'uncapped' pay.
- Finally, existing final salary arrangement powers in NHSPS regulations, for NHS Pensions (instead of the local employer) to determine final pay for part-time members where necessary, will be extended to include the final pay of whole-time members. Where NHS Pensions conclude that a member's final pay is inordinately high, the excess pay will be disregarded when calculating member benefits and the excess scheme contributions refunded.

Specific questions about the new financial and other controls

- 1.19 The widening of NHSPS access to new IPs necessarily brings with it a number of changes to current NHSPS financial management arrangements. NHS and Independent providers alike are invited to think especially about these aspects of the draft legislation. We would be particularly interested to know:
- a) Whether current and prospective NHS employers believe that the scheme admission and control arrangements proposed could be simplified, without weakening the safeguards ensuring public expenditure is protected and to ensure that the NHSPS is used only for employers and staff engaged in NHS work?
 - b) What groups of staff IPs in particular expect to recruit with the support of NHSPS membership?
 - c) Whether there might be a case for limiting the new IP access to specific staff groups, now or in the future?
 - d) We would also be interested to know how "traditional" and existing NHS employers see the proposed changes impacting upon them; and how any impacts could best be managed.

Regular post implementation reviews of the new access arrangements

- 1.20 We will respond to answers to the specific questions posed in paragraph 1.19 above. In addition, we will ensure that there are regular post implementation reviews of the new access arrangements.
- 1.21 It is intended that these reviews will take place at least after the first and the fifth years from the April 2014 implementation and will consider:
- how well the policy has been implemented,
 - the impact that it has had on the health labour market and
 - any changes that may be necessary.

Regulation details for the new IP access arrangements

Existing NHSPS 1995 and 2008 regulations

Independent Provider definition

- 1.22 **Amendment regulations 3(a), 3(c), 3(d) and 19(a) and (b)(ii)**, add 'Independent Provider' to the definitions of NHSPS employing authorities in regulation A2 (interpretation) and regulation 2.A.1. (interpretation: general) of the 1995 and the 2008 regulations respectively. The new definitions make IPs subject to the regulations in the same way as other NHSPS employers. Specific characteristics for Independent Providers are detailed in new Schedule 2B of the 1995 regulations and new Chapter 2.M of the 2008 at amendment regulations 16 and 33 respectively.

Restricting facilities to retain scheme access through secondment of IP employees from an existing NHSPS employing authority

- 1.23 **Amendment regulations 4 and 22** amend regulation B3 (restrictions on further participation in this section of the scheme) and regulation 2.B.2 (restrictions on eligibility: general) of the 1995 and the 2008 regulations respectively. The changes insert new paragraphs in those regulations to close a facility through which NHSPS membership may be currently secured or retained for employees of an Independent Provider who would not normally be able to join staff in the scheme. This can currently be achieved by keeping the staff on the books of an existing NHSPS employing authority and joining them in the NHSPS there, but seconding them to the IP to carry out that organisation's work.
- 1.24 The facility for NHSPS employers to temporarily deploy staff in non-NHS organisations (e.g. for development or research purposes) is a valuable flexibility that must be retained. From 1 April 2014, however, these regulation changes will prevent retention of NHSPS membership on secondment to a non-NHS organisation if that secondment is to perform

NHS contract work for an IP who could now apply to gain NHSPS membership for its staff via the new IP scheme access arrangements.

- 1.25 The regulation amendments will apply immediately to new IP secondments on or after 1 April 2014. However, the regulations will contain a 'grace period' of 12 months from 1 April 2014, for employees already on secondment to an IP in these circumstances at that date. The grace period is intended to allow time for an IP who may be affected by these changes to make fresh employment arrangements for their staff and to apply to NHS Pensions for NHSPS employing authority status via the new scheme access arrangements. Staff employed by an IP in these circumstances which does not apply to gain employing authority status, will cease to be pensionable in NHSPS when the grace period ends.

Extension of Secretary of State power to determine part-time final pay to whole-time members

- 1.26 **Amendment regulations 5 and 20** extend to whole-time scheme members, existing powers for Secretary of State (normally NHS Pensions) to determine final pay for part-time members. The existing provisions are in regulation R5(4) (part-time employment) of the 1995 regulations and regulation 2.A.13(4) (meaning of reckonable pay: non-concurrent part-time employment) of the 2008 regulations. Final pay figures are usually calculated and supplied to NHS Pensions by the direct employer, but regulations R5(4) and 2.A.13(4) can be used when the correct final pay figure is unclear to the direct employer, or the figure determined by that employer appears inordinately high or low.
- 1.27 New regulation C1(10) to (12) (meaning of pensionable pay and final year's pensionable pay) of the 1995 regulations and new regulation 2.A.12A (restriction of reckonable pay where the Secretary of State considers the amount is inordinate) of the 2008 regulations, will extend similar discretion to whole-time members of the Scheme. See also unchanged regulation 2.A.10 (meaning of "reckonable pay": general).
- 1.28 In any such determination of pay, NHS Pensions must have regard to the general level of pay progression/promotions in the NHS and the member's pay in up to ten years previously. If final pay is found to be inordinately high, the excess amount will not be used to calculate benefits and the employer and employee contributions on the amount of that excess will be refunded. However, final pay determined excessive by NHS Pensions will always be disregarded for the purposes of new regulation D3, described from paragraph 1.32 below.
- 1.29 The revised final pay controls do not apply to pensionable earnings under the GP career average arrangement, where fluctuations are averaged out over the period of the member's pension scheme membership, and so have only a modest impact on final pension benefits.

Requirement for new IPs who choose to provide NHSPS redundancy benefits for their staff to pay the employer charges for that early payment up front

- 1.30 **Amendment regulations 7(2) and 26**, insert new provisions at D2(7B) (contributions by employing authorities) of the 1995 regulations and 2.C.6(6) and (7) (contributions by

employing authorities: members becoming entitled to pensions under regulation 2.D.11) of the 2008 regulations respectively. IPs will be required to pay any employer redundancy early payment contributions due under regulations D2/2.C.6 **before** benefits are released and **within a month** of NHS Pensions' advice of the amount payable. The new arrangements will make it possible for IP employers to (optionally) include NHSPS redundancy benefits for any of their staff who have these terms, e.g. where they work alongside compulsorily transferred staff with TUPE rights to redundancy pensions. However, the upfront payment requirement will ensure that the employer charge is met, so that scheme finances, and the other employers who collectively bear any unexpected costs, are properly protected.

- 1.31 **Amendment regulations 7(3), 27(3) and 38**, revise regulation D2(9) of the 1995 regulations and paragraph (2) of regulations 2.C.7 and 3.C.4 of the 2008 regulations. The changes provide for Secretary of State (normally NHS Pensions) to require a primary care employing authority to provide a contributions guarantee, indemnity or bond, not just when there is a default on their contribution payments, but also when such an employer has a *prior history* of such default. The amendment is a discretionary one, so that NHS Pensions will not be *bound* to require a bond in the new circumstances but can do so if they think it is necessary to safeguard scheme finances for other employers and scheme members. The change also provides NHS pensions with a much greater degree of flexibility as to the amount and nature of any bond that is required.

New charge for all NHSPS employers who award large pay increases to staff in one or more of their final three pay years before retirement on a final salary pension

- 1.32 **Amendment regulation 8**, inserts a new regulation D3 (further contributions by employing authorities in respect of excessive pay increases) in the final salary arrangement of the 1995 regulations only.
- 1.33 The new provision facilitates the admission of IPs to the NHSPS and will, in the interests of equal pay and pension treatment, apply to all NHSPS employing authorities. The regulations will require NHS Pensions to identify a 'virtual cap' on the pensionable pay used to calculate benefits in the three final pay years prior to a member's retirement. The virtual cap will be equal to the level of the consumer prices index (CPI) declared for the February immediately prior to any scheme year plus 4.5%, e.g. 7.3% for the 2013/14 scheme year.
- 1.34 Data prepared by the Scheme Actuary shows that the majority of normal final pensionable pay increases made will fall below the new cap. However, the data also reveals significant outliers, in which final year pay can significantly exceed the norm. Without the new final pay control, the additional scheme costs created by these larger increases close to retirement, which cannot be recovered through normal scheme contributions, would fall on all employers and could fall also on scheme members, via the operation of the employer cost cap mechanism.
- 1.35 From 1 April 2014, routine NHS Pensions checks of final pay figures for retirement pensions will include identification of the 'virtual cap'. The check will be made for all pension benefits, including pensions for previously deferred membership, but exclude death benefits and the effect of any pay rises awarded by employers before 1 April 2014. To avoid employers having to calculate up to three additional final pay figures per

retirement case, NHS Pensions will make this check in-house, by calculating a pensionable pay figure for each of the four years before the member's retirement, using scheme year pensionable pay figures supplied by NHSPS employers in their annual pension record updates.

VIRTUAL CAP EXAMPLE

Assume for the purposes of the example that CPI+4.5% is 8% for each of the years considered and that the 'best' of the member's last three year's pay for benefit calculation purposes is their final year - Y1. Please note that Y4 pay of £30,000 is considered only for the purposes of comparison with Y3 pay. Assume also that the member had 30 years of membership.

1. Actual pensionable pay recorded for the member

/-Y4 £30,000-/-Y3 £33,000- (+10%)-/-Y2 £36,300-(+10%)-/-Y1 £39,930-(+10%) /LDOS

Actual pension payable = 30/80 of £39,930 = £14,973.75

Actual lump sum payable (at 3 x pension) = £44,921.25

2. 'Virtually capped' pensionable pay for employer charge purposes

/-Y4-£30,000-/-Y3 £32,400-(+8%)-/-Y2 £34,992-(+8%)-/-Y1 £37,791.36-(+8%)-/LDOS

In line 1 of the example, actual pensionable pay increases at the rate of 10% each year, to reach the amount £39,930, which will be used to calculate the member's pension benefits.

In line 2 of the example, pensionable pay for years Y3 to Y1 is virtually capped at the assumed level of 8% each year, to reach the lower 'maximum allowable figure' of £37,791.36, which will be used to calculate the employer charge but not the member's pension benefits.

- 1.36 In the example at paragraph 1.35 above, the increases in pay awarded to the member exceed the new maximum allowable amount in the years close to retirement. This excess creates additional costs for the scheme and so an employer charge will be generated. The employer charge will be the capitalised value of the benefits payable to the member, worked out using only the pay in excess of the maximum allowable level.
- 1.37 The charge is calculated by working out a pension based only on the pay difference between the actual and virtually capped pay levels. In the example above, this difference is £39,930 - £37,791.36 = £2,138.64.

So a pension for employer charge purposes is worked out using the excess pay

30/80 x £2,138.64 = £801.99, and

A lump sum (at 3 x pension) = £2,405.97

Employer charge

The employer charge is then the excess pension x capitalisation amount supplied by the Scheme Actuary plus the excess lump sum amount.

For example, £801.99 x factor of (21)* = £16,841.79 + lump sum of £2,405.97

* a representative factor, which may vary according to the member's age at retirement

= total employer charge of £19,247.76

- 1.38 Note that an employer charge would be generated by a pay rise in excess of the maximum allowable amount for Y3 (or Y2) in the above example, even if this is followed by 'flatter' pay rises in Y2 and Y1, and Y1 pay remains 'best' for benefit purposes. However, if Y3 pay shows an excessive increase and Y3 is also the member's 'best' year for benefit purposes, the amount of the employer charge in respect of Y3 would be increased by any immediate pensions increases that attach to the member's pension when it goes into payment.
- 1.39 The new final pay control will not apply to "reckonable pay" for pension benefits in the 2008 section of the scheme or to pensionable earnings under the GP career average arrangements of both the 1995 and the 2008 sections of the scheme. This is because late career pay fluctuations under those arrangements are averaged out, and so have a lesser impact on final pension benefits.

New "due date" from which NHS Pensions will pay interest to members with benefits that are paid late

- 1.40 **Amendment regulations 12 and 30**, insert a new 'due date' in paragraph (4) of regulation T8 (interest on late payment of benefits) of the 1995 regulations and paragraph (5) of regulation 2.J.9(5) (interest on late payment of benefits and refunds of contributions) of the 2008 regulations. The due date in these regulations is the point from which NHS Pensions normally pay a benefit and, where that payment is not achieved within a month, will normally add interest to the amount payable to the member.
- 1.41 The new due date reflects changes made in paragraph (2) of regulation D2 (contributions by employing authorities) of the 1995 regulations and paragraph (1) of regulation 2.D.11 (early retirement on termination of employment by employing authority) of the 2008 regulations by amendments 7 and 29 of these draft amendment regulations. The changes clarify that, where the employer is an Independent Provider, the pension will be due, either in the usual way from the day immediately following the date of the member's retirement or, where this is later, the date that NHS Pensions receive the additional contributions referred to above. Without this change, NHS Pensions could be required to pay interest on a member benefit, delayed solely by the inaction of an IP employer.

Administration and interest charges for NHSPS employers who pay their scheme contributions late

- 1.42 **Amendment regulations 13, 31 and 41**, insert new regulations in the 1995 and 2008 sections of the scheme to introduce administration charges and interest payments for NHSPS employing authorities who pay their scheme contributions late. The changes will facilitate the admission of Independent Providers to the scheme and apply to all NHSPS employers. In short the new arrangements will prevent late contributions payment by a few employers increasing scheme costs for every employer.
- 1.43 The new regulations, T9 of the 1995 regulations and 2.J.9A and 3.J.9A of the 2008 regulations, will apply an NHS Pensions administration charge when contributions are paid late ('a chargeable event') to cover the additional costs of identification, recovery and correspondence with the employer. In addition, interest will be charged at a standard rate of equal to the rate of the consumer prices index (CPI) plus 3% from the day following the due date until the date NHS Pensions receive the late contribution amount.
- 1.44 The CPI rate applicable to any scheme year will be the amount of CPI declared for the February immediately prior to that year. In the event that some or all of late paid contributions remain outstanding at a further due date, there will be further administration charge(s) and interest will continue to accrue, compounded with monthly rests, until full recovery is affected.
- 1.45 Employers will avoid the new administration and interest charges entirely if they pay their scheme employee and employer contributions on time, that is by the due dates shown in regulations, for example, for regular employee (and employer) contributions, the 19th day of the month following the month the employer deducts the contributions through payroll.
- 1.46 There will be no retrospective interest charges for employers on any amounts paid late *prior to 1 April 2014*, when the regulations come into force. However, an administration charge will become payable if some or all of those arrears *remain outstanding* at 1 April 2014, and interest will begin to accrue on the whole amount of those arrears from 1 April 2014 until the day NHS Pensions receive full payment.
- 1.47 NHS Pensions will determine, and publish, the amount of the administration charge from time to time. The charge will reflect the additional costs NHS Pensions bear in identifying and corresponding about late paid contributions by employers. The amount of the charge from 1 April 2014 will be confirmed before the regulations become effective but is currently expected to be not more than £100 per chargeable event.
- 1.48 The interest regulations will give NHS Pensions flexibility to determine the amount of the contributions payable at a given due date for the purposes of the new regulations, in cases of doubt. NHS Pensions will also be able to determine the employer required to make payment where employer responsibilities have transferred or been re-assigned to a successor. Finally, NHS Pensions will be able to waive the payment of interest, or to maintain or make other arrangements for recovery of outstanding amounts in exceptional circumstances.

New schedule 2B and new Chapter 2.M detailing IP-specific changes in the 1995 and 2008 regulations respectively

Independent Providers

- 1.49 **Amendment regulations 16 and 33**, insert a new Schedule 2B, in the case of the 1995 regulations, and a new Chapter 2.M, in the case of the 2008 regulations. The new schedule/chapter provides further definitions and detailed scheme access arrangements for the Independent Providers (IP) referred to in paragraph 1.19 above. The new schedule 2B of the 1995 regulations and the new chapter 2.M of the 2008 regulations should be read in conjunction with the remainder of the scheme regulations, which also apply to IPs, except where specifically provided otherwise in the new schedule or the new chapter.
- 1.50 **Amendment regulations 16 and 19 provide in paragraphs (1) and (2) of new Schedule 2B to the 1995 regulations (independent providers) and in regulation 2.A.1 (interpretation: general) of new chapter 2.M to the 2008 regulations** new IP access related definitions used in these regulations, and reference generally to the body of the new schedule/chapter for further detail. The following stand-alone definitions are inserted:

“75% threshold” - the normal maximum proportion of gross NHS pay from all of an IP’s NHS Standard and APMS contracts that can be distributed amongst IP employee/scheme members as pensionable pay. See also, paragraph 1.84 following.

“NHS Standard Contract” – the standard commissioning contract drafted by the NHS Commissioning Board. An IP must be a party to one or more of either this contract or an APMS contract (already defined in 1995 regulation A1 and 2008 regulation 2.A.1) to apply for NHSPS employing authority status. See also “qualifying contract” immediately below.

“Qualifying contract” – a qualifying contract means either of the two contracts described above that IPs must be a party to for consideration as a NHSPS employing authority. The primary purpose of either contract must be the provision of clinical NHS Healthcare Services.

Independent Provider definition

- 1.51 **Paragraph (2) of schedule 2B to the 1995 regulations and paragraph (1) of regulation 2.M.1 of chapter 2.M to the 2008 regulations** define the key IP approval requirements for the purpose of NHSPS regulations.
- 1.52 Those key criteria are:
- An approved IP employer for the purposes of the regulations will always be one that is not already included in the list of employing authorities described in regulation A2 (interpretation) for the 1995 regulations, and 2.A.1 (interpretation: general) for the 2008 regulations. The employees of existing NHSPS NHS employers can already

access the NHSPS in respect of NHS contracts work and must continue to use their existing access route.

- The IP must be party to 1 or more NHS “qualifying contracts” for the provision of clinical services only
- The IP must declare whether it is applying for NHSPS employer status on a “closed” or an “open” basis
 - “closed” status applies to NHSPS eligible IP employees who have had entitlement to join NHSPS (whether or not they actually became members) within 12 months of the date they joined IP employment
 - “open” status applies to all of the IP’s NHSPS eligible employees
- The “closed” or “open” status selected will apply to all of an IP’s NHS qualifying contracts
- At the date NHSPS employer’s status is to begin, the IP must have in place a “contribution guarantee”, covering any default on its best estimate of 3 months’ expected employee and employer contributions to NHSPS

“Wholly or mainly” condition

1.53 **Paragraph 3 of schedule 2B to the 1995 regulations and paragraph (2) of regulation 2.M.1 of chapter 2.M to the 2008 regulations** extend the above rules applying to IP employers to include the “wholly or mainly” condition. IPs may undertake a significant proportion of non-NHS work in addition to their relevant NHS work but a key condition of NHSPS membership for IP employees will be that the majority of their work for the IP is NHS qualifying contract work, specifically:

- each IP employee who becomes a NHSPS member is working on the IP’s qualifying NHS contracts for more than 50% of their total time working for that IP, and
- all of an IP’s employees who become NHSPS members are working on the IP’s qualifying NHS contracts for more than an aggregate of 50% of their total time working for that IP

1.54 The regulations will allow NHS Pensions to monitor and apply both of the above measures flexibly, so that IPs can deploy employees who are scheme members flexibly and interchangeably on any one day with their employees who are not scheme members, if they wish.

1.55 Whilst the provisions described in paragraph 1.51 are intended to make it possible for IPs to manage their employees under a single contract of employment and deploy them flexibly on both NHS and non-NHS contract work, each IP scheme member and IP group of scheme members must meet the “wholly or mainly” condition over the whole of any scheme year, or part of any scheme year where membership/NHSPS employer status begins or ends during that year.

- 1.56 If an employee, or group of employees', mix of NHS and non-NHS work is such that they cannot reliably meet the "wholly or mainly" condition using a single 'mixed' contract of employment, they will be unable to qualify for NHSPS. However, under these circumstances, a viable option for retention of NHSPS IP membership will be to provide separate NHS and non-NHS contracts for the affected employee or group of employees. Under such a separate contract arrangement, the employee's hours worked and pay received under the 'NHS contract' must be kept entirely separate from their non-NHS work, and form 100% of their employment with the IP.

IP application approval by NHS Pensions

- 1.57 **Paragraph (4) of schedule 2B to the 1995 regulations and regulation 2.M.2 of chapter 2.M to the 2008 regulations** require IPs that wish to become NHSPS employing authorities to make an application to the Secretary of State (normally NHS Pensions) for formal approval. NHSPS employer status will normally begin from the NHS Pensions approval date, but IPs may if they wish nominate a start date however, this must always be on or after the approval date.

Information needed for IP approval applications

- 1.58 NHS Pensions is required to check and ensure that IPs comply with the regulations and so the majority of the approval application takes the form of a 'data collection exercise'. NHS Pensions will be able to review and revise the data requested for approval applications in the light of experience, and request additional, unspecified, relevant information to assist them in determining whether an application can be approved.
- 1.59 Key information required in respect of the scheme year of application for IP approval will include confirmation/evidence:
- Of all of the IP's NHS "qualifying contracts"
 - That IP employees that are to be joined in NHSPS meet the "wholly or mainly" condition
 - That the IP is not already a NHSPS employing authority
 - That the approval application is for NHSPS IP status
 - That the IP is not (instead) required to apply for NHSPS employer status under a Fair Deal Direction, for employees subject to a compulsory transfer out of the NHS
 - Whether the IP is applying for NHSPS employer status on a "closed" or an "open" basis (see paragraph 1.52 above)
 - That the IP has arranged a "contribution guarantee" covering any default on its best estimate of 3 months' expected employee and employer contributions to NHSPS

- Of the total gross payments from the NHS Commissioning Board the IP expects to receive for “qualifying contracts”
 - Of the total number of employees engaged in “qualifying contracts” work expected to become scheme members, and their expected pensionable earnings and contributions to the NHSPS
 - Of the total number of employees engaged in “qualifying contracts” and either ineligible for NHSPS, or eligible but not meeting the “wholly or mainly” condition
- 1.60 IPs taking on additional “qualifying contracts” will be required to notify NHS Pensions and update the above information within 14 days so that NHS Pensions can monitor IP scheme membership effectively. The IP must also review and adjust their “contribution guarantee” if new contract(s) make their current guarantee(s) insufficient (see paragraph 1.63 following).

Nature of IP employee NHSPS membership

- 1.61 **Paragraph (8) of schedule 2B to the 1995 regulations and paragraph (5) of regulation 2.M.2 of chapter 2.M to the 2008 regulations** will provide for scheme IP employees to become final salary “officer” scheme members, in the same way required for Direction employees covered by the new Fair Deal policy. For regulation purposes, all IP staff will join the scheme as officers, and accrue benefits in the final salary part of the 1995 or 2008 sections of the scheme, as appropriate. This includes any GP staff that would normally join the career average parts of the scheme under Schedule 2 of the 1995 regulations or Part 3 of the 2008 regulations.
- 1.62 From April 2015, most IP and other scheme members will begin to build up NHSPS pension benefits in a new career average system developed in accordance with the IPSPC’s recommendations for all public service pension schemes. Some IP scheme members who have enjoyed NHSPS membership previously and were within 10 and 13.5 years of their normal pension age on 1 April 2012, may be “protected” and able to remain in the current 1995 or 2008 sections of the scheme. There is more information about this on the NHS Pensions website.

Contribution guarantees

- 1.63 **Paragraphs (11) to (14) of schedule 2B to the 1995 regulations and paragraphs (1) to (4) of regulation 2.M.3 of chapter 2.M to the 2008 regulations** will require IPs applying for NHSPS employing authority status to provide a “contributions guarantee”, guaranteeing payment to the Secretary of State (normally NHS Pensions) of the IP’s reasonable estimate of 110% of 3/12ths of their total annual NHSPS employee and employer contribution liability. If an IP has more than one such contract, “total liability” will mean that IP’s liability for all of their “qualifying contracts”.

- 1.64 A reasonable estimate of 3/12ths of the IP's total annual contributions liability will mean the IP's best estimate of that liability when first becoming a NHSPS employer, with reviews annually thereafter and when "qualifying contracts" are added or lost. NHS Pensions will regularly monitor the guarantee amount provided by reference to the IP's employees joined in the scheme and contributions actually received.
- 1.65 The "contribution guarantee" is designed to provide the Secretary of State (normally NHS Pensions) with assurance that, in the event of a default on contribution payments by the IP, for any reason, the NHSPS will be indemnified in full by a suitable guarantor, removing the risk of losses accruing to the scheme that would otherwise be borne by all NHSPS employers.
- 1.66 The "contribution guarantee" must be provided by a guarantor, and be in a form, that is satisfactory to NHS Pensions. Satisfactory formats will include:
- Bank letter of credit/guarantee (110% guarantee required)
 - Bank security over cash deposit(110% guarantee required)
 - (Parent) company guarantee (100% guarantee required)
 - Insurance company guarantee (110% guarantee required)
- 1.67 Guarantors providing the above guarantees will need to have a suitable credit rating, e.g. 'Standard and Poor's'(AA-) and IPs will need to arrange for initial commencements to run from the date their NHSPS employing authority status is due to commence. NHS Pensions will, in due course, provide approved guarantee templates via their website for the first three arrangements listed above. Insurance company guarantee arrangements will be similar to those for a bank letter of credit/guarantee, with premium(s) paid to the insurance company replacing any requirement to set aside funds on deposit with the bank. However, insurance arrangement formats will be more variable and so a template will not be provided in advance.
- 1.68 Regulations will also require IPs to review and if necessary adjust or supplement its contribution guarantees whenever new qualifying contracts are taken on and employee pensionable pay (and therefore NHSPS contributions) are increased beyond the 10% tolerance provided for in their current estimate. An IP will also be free to reduce its guarantee if liabilities reduce. Guarantees must also be reviewed annually at scheme year ends.
- 1.69 In addition, **paragraph (48(i) of schedule 2B to the 1995 regulations and paragraph (2)(i) of regulation 2.M.7 of chapter 2.M to the 2008 regulations** provide that failure of an IP to report any withdrawal of its contribution guarantee by the guarantor may lead to the termination of its NHSPS employer status.

Termination of IP employer status in the event of contributions default

- 1.70 **Paragraphs (15) to (17)) of schedule 2B to the 1995 regulations and paragraph (5) to (7) of regulation 2.M.3 of chapter 2.M to the 2008 regulations** provide that, in the

event of non-receipt of payment of employee and employer NHSPS contributions by their due date (the 19th day of the month following payroll deductions etc.) administration and interest charges applicable to all NHSPS employers will begin to accrue, in accordance with regulation T9 (interest on late payment of benefits) of the 1995 regulations, and regulations 2.J.9A and 3.J.9A (interest and administration charges: late paid contributions) of the 2008 regulations respectively.

- 1.71 In addition to administration and interest charges, regulations will require NHS Pensions to notify the IP that, if the outstanding contributions are not received in full by the end of the second calendar month following the month for which payment has not been made, its NHSPS employer status will cease from the following day.
- 1.72 It is important to note that IP employees who are scheme members will also cease their membership or cease to be eligible for membership, from that day.

Pension record updating – general

- 1.73 Like other NHSPS employers, IPs will be required to keep pension records for their employees who are scheme members and, in accordance with paragraph (5) of existing regulation U3 (accounts and actuarial reports) of the 1995 regulations and paragraphs (6) to (8) of regulation 2.J.14 (employing authority and certain member record keeping and contribution estimates) of the 2008 regulations, update them to NHS Pensions within 2 months of the end of each scheme year, or sooner where employer status ends.

Pension returns – additional data from IP employers

- 1.74 **Paragraphs (18) to (23) of schedule 2B to the 1995 regulations and regulation 2.M.4 of chapter 2.M to the 2008 regulations** will require IPs to provide additional access related information at the same time as the record updating at paragraph 1.73 above. This additional information will take the form of outturn results, which NHS Pensions will compare with the estimated information supplied in the approval applications described in paragraph 1.57 above for monitoring purposes. For example *actual* employee and employer contributions for the scheme year in place of the *estimated* figures supplied initially.
- 1.75 In addition, IPs will be required to confirm in their additional pension return whether their employees who have become scheme members continue to satisfy the “wholly or mainly” condition described in paragraph 1.53 above. IPs must cease the scheme membership of any employee who no longer satisfies the “wholly or mainly” condition and advise NHS Pensions of such. IPs must also explain in this return any distribution of pensionable pay amongst its employees in excess of the maximum “75% pensionable pay threshold” (see paragraph 1.86 below).
- 1.76 NHS Pensions will use the pension return, and any other information available to it, to confirm whether an IP continues to satisfy the conditions for NHSPS employing authority approval.

- 1.77 **Paragraph (20) of schedule 2B to the 1995 regulations and paragraph (5) of regulation 2.M.4 of chapter 2.M to the 2008 regulations** will authorise NHS Pensions to request the IP to provide, within 14 days, any additional information it reasonably believes is necessary to make that assessment.

Modification of IP approval basis and withdrawal of participation as a NHSPS employer

- 1.78 **Paragraphs (24) and (51) of schedule 2B to the 1995 regulations and regulations 2.M.5 and 2.M.8 of chapter 2.M to the 2008 regulations** provide for an IP to either:
- Modify its NHSPS approval status for employees, from “open” to “closed”, subject to the provision of notice (a “modification notice”) to the Secretary of State (normally NHS Pensions), or
 - Give notice of withdrawal from providing NHSPS to its employees, subject to the provision of notice (a “withdrawal notice”).

A modification or a withdrawal notice will apply to all of the IP’s “qualifying” contracts.

- 1.79 IPs can apply to change:
- A. **“Open approval” to “closed approval”**, if the IP no longer needs or is no longer able to provide all employees with scheme access
 - B. **“Open” or “Closed” approval to complete withdrawal** from NHSPS employer status
 - C. **“Closed approval” to “open approval”**, so that all employees can be joined in the scheme, not just those with NHSPS entitlement within 12 months of joining the IP.
- 1.80 In cases ‘A’ and ‘B’, the IP will be downgrading the NHSPS status for employees, either moving from automatically enrolling all eligible employees in NHSPS, to enrolling just those who were entitled to be NHSPS members within 12 months of joining the IP.
- 1.81 In order to provide appropriate safeguards for staff and due warning for NHS Pensions, **paragraphs (26) and (31) of schedule 2B to the 1995 regulations and paragraphs (3) and (8) of regulation 2.M.5 of chapter 2.M to the 2008 regulations** will require an IP wishing to change its approval basis to provide 6 months’ notice prior to the date the IP wishes to change status. The notice period is intended to give stakeholders, including employees, trades unions and NHS Pensions, time to prepare for the change and adjust pay and pension records appropriately. The IP will also be required to continue to join new employees under the “open” arrangements until the notice period has expired. Existing staff who were originally joined but opted out of NHSPS can also re-join during the notice period, if they wish.
- 1.82 **Paragraph (25) of schedule 2B to the 1995 regulations and paragraph (2) of regulation 2.M.5 of chapter 2.M to the 2008 regulations** will require the IP to continue NHSPS membership for existing employees, unless they specifically decide and formally

notify that they wish to opt-out of membership, e.g. because they prefer a new terms and conditions package offered by the IP. This applies both during and after the 6 months' notice period for existing scheme members.

- 1.83 Once the notice period has expired, the IP will only be required to automatically enrol new employees who were entitled to be NHSPS members within 12 months of joining the IP.
- 1.84 The 6 months' notice period will also apply to case 'B' above, where the IP intends to withdraw entirely from NHSPS employer status. Here, the employer is giving notice that, in future, they will only automatically enrol in NHSPS, any staff who may have a right to membership under Fair Deal. Eligible new employees must continue to be auto-enrolled into the NHSPS during the notice period and eligible existing employees, who originally opted-out of NHSPS membership, will be able to re-join the scheme until the notice period expires. The IP will similarly be required to continue NHSPS membership for existing employees who have joined the scheme, unless they specifically decide and formally notify that they wish to opt-out of membership. Again, this applies both during and after the 6 months' notice period for existing scheme members.
- 1.85 In case 'C', the IP is moving from only automatically enrolling employees who had entitlement to NHSPS within 12 months of joining the IP, to enrolling all their eligible staff. In these circumstances the regulations will require the IP to provide a shorter, 3 month, period of notice. However, once the notice period has expired, the IP must automatically enrol all their eligible staff in NHSPS. This means not just new employees, but all existing employees who may previously have been ineligible to join NHSPS.

75% Pensionable Pay Threshold and Contribution Surcharge

- 1.86 **Paragraphs (36) to (46) of new Schedule 2B and regulation 2.M.6 of new chapter 2.M respectively**, will cap the level of pay that an IP can pension in the NHSPS for its employees who are scheme members, to a normal maximum of 75% of their total gross income from all NHS clinical services contracts.
- 1.87 In traditional NHS organisations, the cost of premises and other overheads is typically such that 75% or less of the organisation's total NHS related income remains available to pay staff and forms the basis of their NHSPS pension benefits. NHS Pensions will monitor the IP 75% pensionable pay threshold annually, using the pension returns the IP must make at the end of each scheme year.
- 1.88 The 75% threshold figure is an average across a range of organisations and will not be repeated precisely in any one organisation, whether inside or outside the traditional NHS. However, some IPs for example those delivering NHS services at home where premises overheads may be modest and the bulk of costs are pay, may be able to show why their NHS pensionable pay is justifiably higher than the normal 75% pay cap. Conversely, IPs with much higher standing costs, or who enrol only modest numbers of staff in NHSPS, may be unlikely to record pensionable pay totals approaching the 75% limit.
- 1.89 The IP 75% pay threshold will be an important control to ensure that NHSPS costs remain broadly the same, whether NHS services are performed inside or outside the traditional NHS. For this reason, IPs whose pensionable pay recorded exceeds the limit

will be required to explain that excess to NHS Pensions, and if necessary pay an “employer contribution surcharge” on the amount of that excess.

- 1.90 The employer contribution surcharge rate from 1 April 2014 will be determined from time to time by the Secretary of State after having considered the advice of the Scheme Actuary and having obtained the Treasury’s consent. The employer contribution surcharge (i.e. the amount payable in addition to the standard 14% employer contribution rate already paid) is expected to be around 12%. The additional amount will reflect the typical extra cost an IP would be likely to face if it needed to obtain NHSPS-style benefits for the excess pensionable pay in the private sector.
- 1.91 The regulations will authorise the Secretary of State (normally NHS Pensions) to call for additional pension related information from IPs, and to make spot checks of employer records if necessary. Evidence of excess pensionable pay in 3 or more out of 5 consecutive scheme years may lead to termination of the IP’s NHSPS employing authority status; see paragraph 48(j) of new schedule 2B of the 1995 regulations and paragraph 2(j) of regulation 2.M.7 of the 2008 regulations.

Termination of employing authority status by the Secretary of State

- 1.92 **Paragraphs (47) to (50) of schedule 2B to the 1995 regulations and regulation 2.M.7 of the 2008 regulations** provide for circumstances in which the Secretary of State (normally NHS Pensions) may need to terminate an IP’s NHSPS employing authority status because of non-compliance with Scheme admission or other rules.
- 1.93 The criteria that will lead to an IP employer’s automatic or discretionary termination are listed in the above paragraphs/regulation. However, the two criteria that will lead to automatic termination are:
- a) IP for whom all employees cease to meet the “wholly or mainly” condition (see paragraph 1.53), and
 - b) IP who defaults on payment of employee and/or employer contributions (see paragraphs 1.70 to 1.72 above)
- 1.94 In case (a), termination is mandatory, as the “wholly or mainly” condition is the scheme’s primary access criterion.
- 1.95 In case (b), termination will also be mandatory, as payment of scheme contributions is a primary criterion for IP scheme membership, to avoid scheme losses that would otherwise fall to all NHSPS employers and scheme members.
- 1.96 In the other cases for determination by the Secretary of State referred to in paragraph 1.92 above, termination of an IP’s NHSPS employing authority status will be at the discretion of the Secretary of State (normally NHS Pensions) having regard to the circumstances of the IP’s non-compliance with regulations and the prospects for early resolution.
- 1.97 In all cases of termination of IP employer status, the Secretary of State will write to the IP concerned to confirm the reasons for the termination and the date from which it will take

effect. Where termination is confirmed to an IP, scheme membership for its employees who have joined the scheme will cease from the same date.

2: Increase to employee contributions from 1 April 2014

Employee contributions

- 2.1 Both the 1995 and 2008 regulations for the NHS Pension Scheme require members to pay contributions to the scheme as a condition of membership. For officer members contribution rates are determined by reference to their full-time equivalent salary. Contribution rates are tiered according to a series of paybands into one of which a member's salary will fall. For practitioner and non-GP provider members contributions are based on their total pensionable earnings rather than salary. This is because standard Agenda for Change (AfC) payscales do not apply to practitioner members.
- 2.2 The Department is required to confirm both salary & pensionable earning bands and corresponding contribution rates in regulations each time there is a change to either element.

Proposed increase to employee contributions from 1 April 2014

- 2.3 The 2010 Spending Review set out the Government's intention to increase the level of employee contributions within each public service pension scheme, including the NHS Pension Scheme. Each public service pension scheme is required to deliver savings equivalent to an average increase of 3.2 percentage points in employee contributions phased in over a three year period to 2014-15.
- 2.4 The rationale and justification for the increases is set out in the Department's responses to the consultations on the 2012-13 and 2013-14 increases, published in December 2011 webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_131747.pdf and March 2013, www.gov.uk/government/uploads/system/uploads/attachment_data/file/157752/NHSPS-April-2013-regs-gov-response.pdf.
- 2.5 In considering how best to structure the increases, the Government laid out a series of parameters within which individual public service pension schemes could develop their approach to achieving the required savings:
 - There should be no increase in employee contributions for those earning less than £15,000 on a Full Time Equivalent basis;

- There should be no more than a 0.6 percentage point increase in 2012-13 for those earning up to £21,000, and no more than a 1.5 percentage points increase in total by 2014-15;
- There should be no more than a 2.4 percentage points increase in 2012-13 for high earners, and no more than 6 percentage points increase in total by 2014-15.

- 2.6 Within these parameters, the Department developed a preferred approach that sought to protect the low paid, apply increases progressively and limit the level of opt outs that higher contribution rates may generate. The first and second year of increases were applied from 1 April 2012 and 1 April 2013 respectively. Opt-out data has been monitored regularly to check the impact of the increases. Trade Unions and NHS employer representatives have also reviewed this data. There has only been a small increase in opt-outs, which are in-line with assumptions. The data does not indicate that a change is required in the approach to determining the distribution of contribution increases for 2014-15.
- 2.7 The Department therefore proposes to implement the indicative 2014-15 contribution rates that were set out in Annex E of Reforming the NHS Pension Scheme for England & Wales: Proposed Final Agreement. A copy is available at: www.gov.uk/government/publications/reforming-the-nhs-pension-scheme-for-england-and-wales-proposed-final-agreement.
- 2.8 The proposed rates are amended from those published in order to link the top of the first contribution tier to Agenda for Change pay point 4 (£15,432). The principle of no increase for those earning up to £15,000 is preserved.

Table 1: Proposed 2014-15 employee contributions before tax relief (gross)

Full-time pay	2013-14 contribution rate (gross)	2014-15 contribution rate (gross)	Contribution rate increase (percentage points)
Up to £15,431	5%	5%	0%
£15,432 to £21,387	5.3%	5.6%	0.3%
£21,388 to £26,823	6.8%	7.1%	0.3%
£26,824 to £49,472	9%	9.3%	0.3%
£49,473 to £70,630	11.3%	12.5%	1.2%
£70,631 to £111,376	12.3%	13.5%	1.2%
Over £111,377	13.3%	14.5%	1.2%

Table 2: Proposed 2014-15 contributions after tax relief (net)

Full-time pay	2013-14 contribution rate net of tax relief	2014-15 contribution rate net of tax relief	Net contribution rate increase (percentage points)	Additional cost (£ per month)
£10,000	4%	4%	0%	0
£15,000	4%	4%	0%	0
£20,000	4.24%	4.48%	0.24%	4
£25,000	5.44%	5.68%	0.24%	5
£30,000	7.2%	7.44%	0.24%	6
£40,000	7.2%	7.44%	0.24%	8
£60,000	6.78%	7.5%	0.72%	36
£80,000	7.38%	8.1%	0.72%	48
£130,000	7.98%	8.7%	0.72%	78

- 2.9 For 2013-14, staff earning up to £15,278 had no increase, whilst those earning between £15,279 and £21,175 saw a minimal 0.3% increase. The Department proposes that for 2014-15 there is no increase in contributions for those earning below £15,431 with a minimal 0.3% increase for those earning between £15,432 and £49,472. This approach is intended to avoid the risk of opt-out which is more prevalent amongst lower earners.
- 2.10 The progressive structuring of contribution rate increases reflects the beneficial impact of tax relief for higher rate tax payers, and the fact that higher earners in final salary schemes generally get double the value in pension benefits per pound of contribution, than the lower paid.
- 2.11 The proposed contribution rates for 2014-15 have been shared and discussed with Trade Unions through the scheme Technical Advisory Group. Both equality and economic impact assessments examining the 2014-15 increases have been prepared and will be published shortly.

Method for applying changes to contribution rates and pay/earnings bands

- 2.12 Member contribution rates are determined with reference to two tables – one for the previous financial year, and one for the current year. This is so that uplifts to Agenda for Change (AfC) pay scales can be properly taken into account when determining a member's contribution rate. These uplifts mean that, when employers consider the contributions an officer needs to pay based on last year's pay, they need to look at last year's AfC bandings, not the current year, in order that the pay looked at for the assessment is tiered using the AfC bandings in force for that year.

- 2.13 For members who are 'new' to the scheme or who change employment terms during a year (e.g. promotion), it is either impossible or inappropriate to 'look back' to a previous year's settled earnings. In these circumstances, contributions should be based on the latest AfC bandings available and the member's current pay, suitably increased to reflect a full year earnings level. This therefore means that regulations need to set out two contribution rate tables – one based on the previous year's paybands, and one based on paybands effective in the current financial year.
- 2.14 As the increases to contribution rates are to be effective from 1 April 2014, this means applying the increases before the conclusions of the Pay Review Body can be formulated into regulations (PRB recommendations are typically available in March). The current 2014-15 scheme year tables would be updated when further regulations are laid in July containing paybands that factor in confirmed uplifts for AfC.
- 2.15 The twin-table approach is also used for practitioner and non-GP provider scheme members, with contribution rates determined by reference to total pensionable earnings rather than salary. Remuneration for these occupations is not linked to AfC and so the situation described for officers does not arise. However, as for officer members, we are unable to determine the second table at this juncture and further regulations will be required in July to confirm the effect of PRB pay uplift recommendations which become known in March.

Detailed changes

New contribution rate table for officer members

- 2.16 Regulation D1 of the 1995 regulations establishes the requirement for members to pay a contribution to the scheme. Paragraph (1A) provides that contributions from officer members are based on salary level and accordingly the level of contribution is determined by reference to a pay band into which the salary falls. This is set out in a table which gives the payband and corresponding contribution rate that is to apply for a particular financial year.
- 2.17 Amendment regulation 6 replaces paragraph (1A) with a new provision that inserts a table with the new paybands and corresponding contribution rates that would apply to members in 2014-15.
- 2.18 Regulation 2.C.2 is similar in effect to regulation D1 of the 1995 regulations in that it establishes the requirement for members to pay a contribution. Paragraph (2) has the same purpose as paragraph (1A) of regulation D1 of the 1995 section – i.e. requires that the level of contributions paid by officer members are determined by reference to a table of pay bands. Amendment regulation 24 replaces paragraph (2) with a new provision that inserts a table of new paybands and contribution rates that would apply to members in 2013-14.

New contribution rate tables for practitioner & non-GP provider members

- 2.19 Paragraph 10 of Schedule 2 of the 1995 regulations provides that regulation D1 applies to practitioner and non-GP provider members but with certain modifications as required by sub-paragraph (2). Amendment regulation 15(7)(a) replaces sub-paragraph (1A) which contains the previous contribution rate tables for 2012-13 and 2013-14, with two tables – one reflecting the earnings bands for 2013-14, and one with the new earnings bands and contribution rates for 2014-15.
- 2.20 In the 2008 regulations, 3.C.2 provides that a practitioner member's contribution rate is based on their level of pensionable earnings. The contribution rate is determined by reference to a pensionable earnings band into which their earnings falls. This is set out in a table which gives the pensionable earnings band and corresponding contribution rate that is to apply for a particular financial year. Using the same approach as amendment regulation 15(7)(a) above, new tables are introduced by amendment regulation 37(2) which replaces paragraph (17).
- 2.21 Regulation 2.C.4 provides that non-GP provider member's contribution rate is based on their level of pensionable earnings. As with practitioner members, the contribution rate is determined by reference to a pensionable earnings band into which their earnings fall. This is set out in a table which gives the pensionable earnings band and corresponding contribution rate that is to apply for a particular financial year.
- 2.22 Amendment regulation 25(2) replaces paragraph (15) which contains the previous contribution rate tables for 2012-13 and 2013-14, with two tables – one reflecting the earnings bands for 2013-14, and one with the new earnings bands and contribution rates for 2014-15.

3: Lifetime Allowance Limit: Fixed & Individual Protections 2014

- 3.1 An individual can save as much as they like towards their pension but there is a limit on the amount of tax relief available. The lifetime allowance limit is the maximum amount of pension saving that a person can build up that benefits from tax relief. If the person builds up pension savings worth more than the lifetime allowance then a tax charge is payable on the excess.
- 3.2 The Finance Act 2013 amends the Finance Act 2004 to reduce the Lifetime Allowance Limit (LTA) from the current £1.5m level to £1.25m with effect from 6 April 2014. Transitional measures include two new protection facilities for individuals who would be affected by the new lower limit.
- 3.3 'Fixed Protection 2014' and 'Individual Protection 2014' work in a similar fashion to existing protections, in that the protection is available upon application to HMRC. Time limits apply and a certificate is given to successful applicants. The certificate acts as proof of protection and is presented to the scheme administrator when an LTA charge assessment is made.
- 3.4 Further details about the LTA and Fixed & Individual Protections 2014 are available via the HM Revenue & Customs website - www.hmrc.gov.uk/pensionschemes/pension-savings-la.htm

Interaction with scheme regulations

- 3.5 Previous changes to the LTA have been accompanied by similar protection facilities. The approach in NHS Pension Scheme regulations has been to supplement the Finance Act 2004 requirements with bespoke provision dealing with the administration of the LTA (and other tax charges such as the Annual Allowance Charge). The intention is to make clear the duties of the member and the scheme administrator regarding the quantification, deduction and payment of such charges.
- 3.6 The Fixed Protection 2014 facility is already available, however Individual Protection 2014 is subject to the passage of further legislation. A draft schedule covering Individual Protection 2014 and associated notification regulations were presented as part of the Individual Protection 2014 consultation that ended in September.
www.gov.uk/government/uploads/system/uploads/attachment_data/file/205777/130607_I_P14_Condoc_Final.pdf.
- 3.7 We are therefore proposing amendments to scheme regulations that anticipate this legislation. If the Individual Protection 2014 facility does not become law before the draft NHS Pension Scheme regulations are laid before Parliament, then those amendments will be withdrawn.

Detailed changes

- 3.8 Amendment regulations 11 & 18 accommodate these new protection facilities within scheme regulations in a way that is consistent with the handling of other existing LTA protections.
- 3.9 Paragraph (8) of 1995 section regulation T2A is amended and new paragraph (8B) added with the effect that members who wish to rely on Fixed or Individual Protection 2014 are required to give the scheme administrator the HMRC reference number as proof of protection. This is to be done either at the time of claiming a scheme benefit or afterwards, within a timeframe specified by the administrator. Corresponding amendments are made to paragraph (3A) of 2008 section regulation 1.B.3 with new paragraph (3B) added.
- 3.10 References to paragraphs (8A) and (8B) are inserted into T2A(7) and (8) so that, as with other LTA protection facilities, the administrator is permitted to treat the whole benefit as chargeable and pay an LTA charge on that basis if a member fails to provide on time the reference number and other information required to assess LTA liability.

4: Miscellaneous & technical amendments

- 4.1 The draft regulations make a number of miscellaneous amendments and minor technical corrections.

Miscellaneous amendments

Updating the definition of 'host board'

- 4.2 **Amending regulations 3(b), 19(c) and 34(3)** update the definition of “host board” in regulation A2 (interpretation) of the 1995 regulations and regulations 2.A.1 and 3.A.1 (interpretation: general) of Part 3 of the 2008 regulations, to clarify that from April 2013 the employing authority in England for a type 1 Practitioner, a type 2 Practitioner, a GP Locum or a non-GP Provider is The NHS Commissioning Board.
- 4.3 In Wales, the employing authority for a type 1 Practitioner, a type 2 Practitioner or a non-GP Provider remains the Board that is the commissioner of GMS, PMS, APMS, GDS, or PDS. For a GP Locum in Wales, the employing authority remains the Board on whose medical performers list the locum’s name appears.

Clarifying the pension’s information employing authorities must send annually to NHS Pensions

- 4.4 **Amending regulations 14, 32 and 42** replace regulation U3 of the 1995 regulations and amend regulations 2.J.14 and 3.J.14 of Part 3 of the 2008 regulations to set out more clearly existing pension’s information that employing authorities must send annually to NHS Pensions.
- 4.5 Three main types of annual pensions information are required:
- A. *Reasonable, best endeavours estimate of total employee and employer contributions payable under NHSPS that the employing authority expects to pay to NHS Pensions during the coming scheme-year* – used to monitor monthly contributions paid by employing authorities
 - B. *Member details* – pensions on line or paper update of individual NHSPS member records at the end of each new scheme-year
 - C. *Employee and employer contributions out turn details* – used to support preparation of annual NHS Pensions Resource Accounts
- 4.6 The deadline for submission of pensions information return A (for officer members including Practice Staff but excluding Practitioners and non-GP Providers) is within one month of the *start* of each scheme-year.

- 4.7 The deadline for pensions information return B is within two months after the *end* of each scheme year. The amended regulations now also formally require employing authorities to notify NHS Pensions of any *change* in this information within one calendar month.
- 4.8 The deadline for pensions information return C is within two months of a request from The NHS Business Services Authority for details of the total Scheme contributions they have paid over for any scheme-year.
- 4.9 Where there is a change to the above information notified to NHS pensions, the employing authority must notify NHS Pensions within one month of the change.

Minor and technical amendments

- 4.10 Amending regulation 10 provides for the removal from 1995 section regulation R1(3) of the words ‘the relevant’ which had been incorrectly left in when a reference to Primary Care Trust was removed in April 2013.
- 4.11 Amending regulation 15(2) improves the readability of the definition of locum practitioner in Schedule 2 to the 1995 section regulations. An ‘a’ is inserted before the reference to Local Health Board.
- 4.12 Amending regulation 15(2) corrects a grammatical error in the definition of “locum practitioner” in paragraph (1) of Schedule 2 to the 1995 regulations.
- 4.13 Amending regulation 15(3) makes the definition of “locum practitioner” subject to paragraph 23(16) of Schedule 2 to the 1995 regulations, and makes paragraph (7) of regulation 3.B.5 subject to paragraph (16) of regulation 3.J.14. The amendments clarify that where a locum is also a type 1 or 2 medical practitioner their type 1 or 2 practitioner pensionable earnings may be set to zero if they do not complete their annual certificates of pensionable income.
- 4.14 Amending regulation 15(4)(a) replaces paragraph 3(2) of Schedule 2 of the 1995 regulations to improve existing wording and clarify that where a type 1 medical practitioner works for a Clinical Commissioning Group (CCG) under a contract for services (i.e. on self-employed basis) their CCG income is pensionable.
- 4.15 Amending regulation 15(4)(b) inserts “a dental trainer’s grant” after paragraph 3(2C) of schedule 2 to the 1995 regulations, to clarify that the dental trainers grant is pensionable but excluded from the “pensionable earnings ceiling” referred to in paragraph 3(2B) of the schedule.
- 4.16 Amending regulation 15(5) deletes sub-paragraph (5)(5) of schedule 2 to the 1995 regulations detailing, now obsolete, action for type 1 medical practitioners
- 4.17 Amending regulation 15(6) corrects paragraph 6 of schedule 2 to the 1995 regulations by omitting the word “overtime”. Practitioners are required to pension all of their pensionable earnings and there is no concept of overtime.

- 4.18 Amending regulation 15(7)(b) replaces paragraph (7), using revised paragraph 7(a) to clarify that where a type 1 Practitioner works for more than one practice each practice must pay over employer contributions for them. However, revised paragraph (7)(b) provides that, in such circumstances, a non-GP Provider can be pensionable under only one of the practice's they work for (who will be responsible for paying over their employee and employer contributions) and the name of that practice must be nominated to the NHS Commissioning Board or, in Wales, the Local health Board.
- 4.19 Amending regulation 15(7)(c) adds arrears of contributions to purchase added years or additional pension to those arrears already listed in paragraph 10(17) of schedule 2 to the 1995 regulations, as a result of failure to pay by a practitioner or non-GP provider.
- 4.20 Amending regulation 15(7)(d) further amends paragraph 10(17) of schedule 2 to the 1995 regulations. This change relates to the recovery of the arrears referred to in paragraph 4.23 above from a practitioner or non-GP provider by deduction from their pension benefits at retirement. This form of recovery is invariably beneficial to the scheme member and can be useful if other methods prove unworkable. The current wording of the regulation is illogical, since it can imply that full payment of benefits may be available without full payment of the contribution arrears, which is unacceptable. The amendment replaces the current requirement for 'member consent' to recovery, with a duty for NHS Pensions to simply 'notify the member'.
- 4.21 Amendments equivalent to those in paragraph 4.20 above are made for non-GP providers by amendment regulation 23 in paragraph (6) of regulation 2.C.1 (contributions by members) and for medical and dental practitioners, in regulation 3.C.5 (payment of contributions) of the 2008 regulations.
- 4.22 Amending regulation 15(7)(e) inserts a new sub-paragraph 17C to schedule 2 to the 1995 regulations. The new sub-paragraph clarifies in the regulations that, although the NHS Commissioning Board, or in Wales the Local Health Board, is the NHSPS employing authority for certain purposes (e.g. automatic enrolment) it is the GP/non-GP Provider that is responsible for payment of their employer contributions. This is because practice 'global sum' or contract price funding, includes an element for the payment of their employer contributions.
- 4.23 Consequently, the amendment at paragraph 4.22 above provides also for the GP/non-GP Provider to be responsible for any delay in payment of those contributions in relation to new regulation, T9 (interest and administration charges: late paid contributions) in the 1995 regulations.
- 4.24 2008 regulation amendments for non-GP providers equivalent to those in paragraphs 4.22 and 4.23 above are made by amendment regulation 19(c) in the revised definition of "host board" in regulation 2.A.1 (interpretation: general) and in new regulation 2.J.9A (interest and administration charges: late paid contributions).
- 4.25 2008 regulation amendments for medical and dental practitioners equivalent to those in paragraphs 4.22 and 4.23 above are made by amendment 34(3) in the revised definition of "host board" in regulation 3.A.1 (interpretation: general) and in new regulation 3.J.9A (interest and administration charges: late paid contributions).

- 4.26 Amending regulation 15(8) extends the existing provision in paragraph 23 of schedule 2 to the 1995 regulations for a practitioner or a non-GP Provider who fails to complete a relevant certificate under the paragraph to have their pensionable earnings set to zero until they comply. In addition the amendment:
- provides for earnings to be ‘zeroed’ if the certificate is poorly or incorrectly completed and
 - that partly-paid contributions will not be refunded because of non or poor completion
- 4.27 Amending regulation 35 replaces “registered medical practitioner” in paragraph (3) of regulation 3.A.9 with “type 1 medical practitioner”, to make it clear that the provision refers to medical general practitioners and not (hospital doctor) registered medical practitioners.

2008 section joiners

- 4.28 An amendment is required to the 2008 section regulation 2.B.1(3)(b) to prevent the unintended exclusion of certain joiners.
- 4.29 Amendments were made in October 2008 to the “other Section conditions” in 2.B.1(5) in respect of certain deferred 1995 Section members (over 5 year returners), who were excluded from the 1995 section but eligible to join the 2008 Section.
- 4.30 However a further amendment is required to ‘Condition B’ in 2.B.1(3)(b) to permit 2008 section membership for returning deferred 1995 section members who are ineligible to re-join the 1995 section (e.g. disqualifying break in service) but who would also be ineligible to join the 2008 section because they had entered NHS employment before 1 April 2008 and were active in the 1995 section at that date.

Amending regulation 21 varies eligibility condition B so that active 1995 section membership before 1 Apr 2008 no longer disqualifies 2008 section membership in these circumstances.