



Department  
of Health

# The draft National Health Service Pension Scheme (Amendment No.2) Regulations 2014

Response to consultation

June 2014

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NHS staff and employers; independent, voluntary sector and “traditional” NHS Trust providers of NHS clinical services

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# Introduction

The Department of Health published for consultation a draft Statutory Instrument titled The National Health Service Pension Scheme (Amendment No.2) Regulations 2014.

The Statutory Instrument proposed a series of amendments to the NHS Pension Scheme regulations that in summary:

- change pay/earnings bands for the 2014/15 scheme year;
- amend the regulation which introduced charges for employers who award large pay increases to certain staff before retirement, so that an increase due to the ending of a salary sacrifice arranged before 1 April 2014 is ignored;
- accommodate the HMRC Individual Protection facility;
- make minor miscellaneous & technical amendments.

This document sets out the Government's response to the comments received through consultation. Views were received on the first two proposed changes; none were received on the latter two.

# 1. Consultation Process

- 1.1 The consultation ran from 23 April 2014 to 28 May 2014.
- 1.2 Both the draft regulations and a document explaining the proposed changes were published on the gov.uk website, as well as the scheme's administrator's (NHS Business Services Authority) website. Responses to the consultation were invited by email or post.
- 1.3 As part of the governance arrangements underpinning the NHS Pension Scheme, the major NHS Trade Unions were formally notified of the consultation.
- 1.4 A total of 4 responses were received. All of the respondents were writing on behalf of organisations or individuals engaged in providing NHS clinical services. The respondents included the British Dental Association, the Federation of Clinical Scientists, the South Tees Hospitals NHS Foundation Trust and NHS Employers.

## 2. Changes to Pay/Earnings Bands for 2014/15 Scheme Year

- 2.1 The consultation proposed a change to the pensionable pay/earnings bands for the scheme year 1 April 2014 to 31 March 2015 as a consequence of the 1% increase to pay effective from 1 April 2014. The proposed new bands are set out at paragraphs 2.8 – 2.9 below.

### *Background*

- 2.2 Since 1 April 2008 member contribution rates in the NHS Pension Scheme have been determined by reference to pensionable pay/earnings in a scheme year. Rates range from 5% to 14.5% and members are allocated to a tiered rate according to the band into which their pay/earnings falls.
- 2.3 The pay/earnings bands are updated in accordance with increases made to the NHS Agenda for Change (AfC) pay scales. No general pay uplift has been applied to AfC pay scales with effect from 1 April 2014 as the Government did not accept the recommendations of the NHS Pay Review Body.
- 2.4 However, an adjustment was made to AfC spine point 15 with effect from 1 April 2014 to ensure that members progressing to this point would receive a 1% increase in pay. Without any change to the pay/earnings bands in the NHS Pension Scheme regulations those members at pay spine point 15 (to which the upper limit of the second tier of pension contribution rate is pegged) receiving the 1% pay uplift would move from the second to the third tier.
- 2.5 This would have meant that as a result of a 1% pay increase, their pension contribution rate increased by 1.5%. This was clearly not the intended effect of the pay uplift, hence it was appropriate to raise the threshold at which the top of the second, and bottom of the third, tier of member contributions is set in line with the pay uplift.
- 2.6 The updated pay/earnings bands will come into force in July 2014 and have retrospective effect from 1 April 2014. The changes are wholly beneficial as they increase the pensionable pay/earnings threshold at which members move from the second to the third contributions tier. The changes insert new pay/earnings thresholds only; there is no change in the contributions percentages payable and no change to the way the tables are used.
- 2.7 Responses were supportive of the changes to the pay/earnings bands to reflect the pay increase. One response did not comment on the proposed changes but reiterated opposition to the general policy of increasing pension contributions for members of public service pension schemes. However, this general policy does not form part of this amending statutory instrument, which is wholly beneficial.

### *Revised tables*

2.8 The tables for officer members will appear in regulations from July 2014 as follows:

**Table 1**

**Scheme Year 2014-2015<sup>1</sup>**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,387	5.6%
£21,388 to £26,823	7.1%
£26,824 to £49,472	9.3%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%".

**Table 2**

**Scheme Year 2014-2015<sup>2</sup>**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,477	5.6%
£21,478 to £26,823	7.1%
£26,824 to £49,472	9.3%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%".

**Practitioner and non-GP provider members**

2.9 Table 1 and the revised Table 2 for practitioner members will appear in regulations from July as follows:

**Table 1**

**Scheme Year 2013-2014<sup>3</sup>**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,387	5.3%
£21,388 to £26,823	6.8%

<sup>1</sup> This table is for members in continuous employment before and after 1 April 2014

<sup>2</sup> This table is for new and promoted etc. members on and from 1 April 2014

<sup>3</sup> This table is for earnings applicable to the 2013-14 scheme year

£26,824 to £49,472	9%
£49,473 to £70,630	11.3%
£70,631 to £111,376	12.3%
£111,377 to any higher amount	13.3%

**Table 2**  
**Scheme Year 2014-2015<sup>4</sup>**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5%
£15,432 to £21,477	5.6%
£21,478 to £26,823	7.1%
£26,824 to £49,472	9.3%
£49,473 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%”.

2.10 Individual regulations affected by the statutory instrument are as follows:

- 1995 section – regulations D1 (contributions by members) and Schedule 2, paragraph 10 (medical and dental practitioners – contributions to this section of the scheme)
- 2008 Section – regulations 2.C.2 (contribution rate for members other than non-GP providers), 2.C.3 (determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP providers), 2.C.4 (contribution rate and determination of pensionable earnings for non-GP providers) and regulation 3.C.2 (members’ contribution rate).

### *Conclusion*

2.11 Given the wholly beneficial nature of the proposed changes, and the supportive responses to the consultation, the Government proposes to implement the changes as set out in the consultation document, and reiterated above.

<sup>4</sup> This table is for earnings applicable to the 2014-15 scheme year



### 3. Changes to regulation D3 – Further contributions by employing authorities in respect of excessive pay increases

- 3.1 From 1 April 2014, regulation D3 of the 1995 regulations introduced further contribution charges for NHS employers who make pay increases beyond a new pay cap in the three years prior to retirement/termination of membership. The cap applies to pension (but not death) benefits and is equal to the level of the consumer prices index for the February prior to the relevant year + 4.5%. The further employer contribution applies to pay increases made above this cap, in the final pay year used to calculate scheme benefits. The member's pension benefits are NOT reduced and continue to be calculated on uncapped pay.
- 3.2 The introduction of regulation D3 followed a period of consultation, and consideration of issues raised during that consultation<sup>5</sup>. Under regulation D3, a pay increase is regarded as “excessive” if the annual percentage increase in pay for one or more of a member's final three years prior to retirement exceeds the level of the consumer process index plus 4.5%.
- 3.3 Further representations from NHS employers and stakeholders were received after publication of the April 2014 consultation response document, and after the laying of the finalised statutory instrument. The further representations have been carefully considered and reflected upon, resulting in these July 2014 proposals for a limited amendment to regulation D3, which will have retrospective effect from 1 April 2014.
- 3.4 Regulation D3 already disregards a pay increase made for any reason *before* 1 April 2014. The amendment to regulation D3 proposed now will additionally disregard a pay increase made on or after 1 April 2014 provided that it is caused by the ending of a “salary sacrifice” arrangement entered into *before* that date.
- 3.5 Under a salary sacrifice arrangement, an employee gives up part of their pay in exchange for a “benefit in kind”, for example a car, during a period agreed with their employer. When the salary sacrifice arrangement is brought to an end pay normally resumes its former level. NHS Pension Scheme members pay lower scheme contributions during a salary sacrifice arrangement; however, they normally regain full pension entitlement if pensionable pay is restored in the 2 – 3 years before retirement.
- 3.6 A salary sacrifice made on or after 1 April 2014 will continue to reckon towards “excessive” pay increases under regulation D3. However, the amendment will mean that an employer will not now be charged for any pay increase made on or after 1 April 2014 that is caused by the ending of a salary sacrifice entered into before that date.
- 3.7 Three respondents commented on amendment regulation 5(6) excluding pre-April 2014 salary sacrifices from regulation D3 employer charges. All were pleased to see the further easement in regulation D3 charging, but reiterated the wider concerns they

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<sup>5</sup> <https://www.gov.uk/government/consultations/amendments-to-nhs-pension-scheme-regulations>

had raised in response to the 1 April 2014 SI consultation. The Department's formal response to that consultation, published on 10 March 2014, addressed those wider concerns. This can be viewed here

<https://www.gov.uk/government/consultations/amendments-to-nhs-pension-scheme-regulations>

### *Conclusion*

- 3.8 Given the generally supportive responses to the changes consulted on, the Government proposes to implement the changes as set out in the consultation document, and reprised above. Amending regulation 5(6) will add existing (pre-1 April 2014) "salary sacrifice" arrangements to the final pay increases disregarded under 1995 regulation D3, by replacing sub-paragraph 17 of regulation D3 with an enhanced version.

## 4. Lifetime Allowance Limit: Individual Protection 2014

- 4.1 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.
- 4.2 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 the Individual Protection 2014 facility for individuals who would be affected by the new lower limit.
- 4.3 'Individual Protection 2014' works 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.
- 4.4 No comments were received on these proposed amendments, which are wholly beneficial in nature. However, it is now clear that the tax legislation enabling Individual Protection 2014 will not be in place before these draft NHS Pension Scheme amending regulations must be laid before Parliament. Accordingly we will withdraw those parts of the regulations that relate to Individual Protection 2014 but confirm our intention to make the changes later this year once the relevant tax legislation has received Royal Assent.