



Department  
of Health &  
Social Care

# **The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022**

**Report detailing the changes to the member contribution  
structure**

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Presented to Parliament pursuant to section 22(2)(b) of the Public Service Pensions Act 2013.

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# Contents

The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022.....6

    Introduction.....6

    Background .....6

    Policy Objective .....7

    Consultation.....9

    Impact.....12

    Conclusion.....14

# **The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022**

## **Introduction**

This report is laid before Parliament in accordance with s.22(2)(b) of the Public Services Pension Act 2013 (the “2013 Act”). It relates to a proposal to make regulations under the 2013 Act.

The purpose of the regulations is to further amend the National Health Service Pension Scheme Regulations 2015 (the “2015 Regulations”) and to update the member contribution structure that will take effect on 1 October 2022.

The proposed regulations provide for members’ contribution rates to be based on actual annual rates of pensionable pay, updated member contribution rates and pay thresholds and a structure that allows the member contribution thresholds to be updated annually. As this proposal includes a change to a protected element of the NHS Pension Scheme (as described in section 22(5)(b) of the 2013 Act), we have consulted persons or representatives of those likely to be affected by the change with a view to reaching agreement with them and now lay this report before Parliament.

The purpose of this report is to set out why the Department of Health and Social Care proposes to make these regulations, having regard to the desirability of not making a change to the protected elements of the scheme under section 1 of the 2013 Act within the protected period.

## **Background**

In 2010, the Independent Public Service Pensions Commission was set up and chaired by Lord Hutton. His report, in 2011, made a number of recommendations on how to reform public service pensions.

The public service pension reforms legislated for under the 2013 Act are designed to last for at least 25 years. The provisions in this legislation are intended to ensure a high bar is set for those contemplating changing scheme features. There are enhanced procedural requirements for consultation and a report to Parliament when making changes to “protected elements” for a period of 25 years as the mechanism to support that aim.

Member contribution rates under the respective scheme are one of the protected elements.

Section 22 of the 2013 Act sets out the procedure to be followed in the event that the responsible authority (the Secretary of State for Health and Social Care in relation to the NHS Pension Scheme), proposes to make changes that impact on elements of the scheme which are subject to enhanced protection. These elements are protected from modification until 31 March 2040 (the protected period), unless the prescribed procedure set out in section 22 is followed. Where a change is proposed to a protected element during the protected period, the responsible authority must:

1. consult those who appear likely to be affected, or representatives of those persons, with a view to reaching agreement; and
2. lay a report before Parliament.

## **Policy Objective**

The reforms referred to above led to the making of the 2015 Regulations. When the 2015 Regulations were being developed, the Department of Health set out proposed member contribution rates to be fixed until the next valuation of the NHS Pension Scheme. When the 2015 Regulations were made, the member contribution rates were set for a four-year period with an end date of 31 March 2019. This is because it was expected that there would be a valuation of the scheme which would establish what contributions would be required after that, taking account of the employer cost cap and HM Treasury directions.

However, the initial period was extended by the National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019 (the “2019 Regulations”). The original policy intention was to extend the period for a further two years, until 31 March 2021. The 2019 Regulations amended the 2015 Regulations to allow the member contribution structure to be in force until further regulations were made.

The NHS Pension Scheme requires members to pay contributions as a condition of membership. Regulations 30 and 31 of the 2015 Regulations make provision for member contribution rates for each scheme year from 1 April 2015.

Further accrual in the final salary legacy schemes will close from 1 April 2022 and all members will move into the 2015 career average scheme for future service. This will end final salary accrual and stop further career average accrual in the final salary legacy schemes for practitioners. Therefore, the member contribution structure was reviewed in

collaboration with stakeholders and there are four changes that are to be made to the member contribution structure and the 2015 Regulations.

First, members' contribution rate will be based on actual pensionable pay instead of members' notional whole-time equivalent pay. As a reflection of the increasing number of scheme members with no active final salary link, many part-time members will see their contribution amounts reduce. The amount of member contributions that members who work part-time will pay will more accurately reflect the amount of pension they are building.

Second, the structure for member contributions will change and there will be a reduction in the number of tiers and the steepness of the remaining tiers. The member contribution structure has been designed to ensure the required yield of 9.8% average member contribution is met while protecting the affordability of the scheme for the whole NHS workforce.

Third, the thresholds for the member contribution tiers will be increased in line with annual Agenda for Change pay awards. This means that salary increases due solely to centrally agreed annual pay awards are unlikely to result in members moving up a contribution tier and see a net reduction in take-home pay. Further regulations will be made in order to update member contribution tiers to reflect any Agenda for Change pay awards. This is expected to be required on an annual basis.

Finally, the new member contribution structure will be phased in. During the consultation period, the department listened to concerns from consultation respondents that the proposals would be introduced at a time of significant wider economic challenge.

In recognition of this, the Department decided to delay the implementation of the new member contribution structure to 1 October 2022. This policy intention was that a six-month delay would mitigate the impact on take-home pay for NHS staff in the short-term and give members and employers more notice of the changes that will come into effect in October. It will also ensure the updated structure is introduced after the current Pay Review Body report is published.

The member contribution structure, with the tier boundaries reflecting the 2021 to 2022 Agenda for Change pay points, is:

Current tiers	Pensionable earnings (rounded down to nearest pound)	Current rate (Whole time equivalent pay)	Rate from 1 October 2022 (Actual pay)	Provisional rate from 1 October 2023 (Actual pay)	Proposed tiers
Tier 1	Up to £13,231	5.0%	5.1%	5.2%	Tier 1
Tier 1	£13,232 to £15,431	5.0%	5.7%	6.5%	Tier 2
Tier 2	£15,432 to	5.6%	6.1%	6.5%	Tier 2



	£21,478				
Tier 3	£21,479 to £22,548	7.1%	6.8%	6.5%	Tier 2
Tier 3	£22,549 to £26,823	7.1%	7.7%	8.3%	Tier 3
Tier 4	£26,824 to £27,779	9.3%	8.8%	8.3%	Tier 3
Tier 4	£27,780 to £42,120	9.3%	9.8%	9.8%	Tier 4
Tier 4	£42,121 to £47,845	9.3%	10.0%	10.7%	Tier 5
Tier 5	£47,846 to £54,763	12.5%	11.6%	10.7%	Tier 5
Tier 5	£54,764 to £70,630	12.5%	12.5%	12.5%	Tier 6
Tier 6	£70,631 to £111,376	13.5%	13.5%	12.5%	Tier 6
Tier 7	£111,377 and above	14.5%	13.5%	12.5%	Tier 6
-	Expected yield	9.8%	9.8%	9.8%	-

For the purpose of determining a member's contribution tier, their pensionable earnings are rounded down to the nearest whole pound. In practice, the tier thresholds will be increased annually in line with Agenda for Change pay awards and therefore the figures will be revised.

## Consultation

As referred to above, in accordance with section 22(2)(a) of the 2013 Act, the Secretary of State for Health and Social Care consulted persons or representatives of such persons who appear likely to be affected by the proposed regulations with a view to reaching agreement with them. A list of these consultees is kept up to date and online at [NHS Pension Scheme: consultee list - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/nhs-pension-scheme-consultee-list)

The department has been working with the Scheme Advisory Board (the "SAB") to review the member contribution structure with a view to reaching agreement. The SAB is a statutory board comprising trade union and employer representatives, that advises the Secretary of State for Health and Social Care on the merits of making changes to the NHS Pension Scheme. The review considered a number of design aspects, including the range and number of tiers, whether the rate payable should be determined using whole-time equivalent or actual earnings, and providing for the earnings ranges in each tier to be revalorised to avoid pay awards placing individuals in higher contribution tiers.

In 2018, the SAB reached full agreement that:

1. the principles underpinning the current contribution structure should be retained, including protection for the low paid;
2. the risk of opt-outs should be minimised;
3. work should be done to ensure the Scheme remains a sustainable and valuable part of the NHS reward offer;
4. 'cliff edges' in the contribution structure should be resolved. Cliff edges refer to instances where a member receives a pay award which causes them to move to a higher contribution band. Although this serves to increase their pension, it also reduces take-home pay;
5. there is a pressing need to explore ways to minimise scheme opt-outs and mitigate other issues caused by the impact of pension taxation; and
6. a move to use actual pay, rather than whole-time equivalent pay, to determine contribution rates would be appropriate.

The SAB reached a majority recommendation that the existing contribution structure be retained until 31 March 2021, which the department accepted. There was a recognition that further discussion was needed in several areas, including the approach to avoid cliff edges. Further, the SAB expressed concern about not wanting any increases to contribution rates offsetting take-home pay increases from the 2018 Agenda for Change pay deal which covers the majority of members.

Following extensive discussions with the SAB during 2021, we received further advice that indicated the areas on which SAB held a consensus view, and those on which the majority of the SAB agreed on.

At this point, there was a consensus among the SAB that the new contribution structure should:

1. use actual annual pensionable pay rather than whole time equivalent to determine the contribution rate payable by an individual;
2. reduce the number of contribution tiers, compared to the current member contribution structure;
3. increase the contribution tier boundaries, in line with the annual AfC pay award; and
4. minimise the number of opt-outs across the full scheme membership.

The majority view of SAB was that significant changes should not be made to the member contribution structure from 1 April 2022. The majority view of staff representatives was that making changes at this time is problematic due to the wider economic landscape and challenges in relation to total pay and reward. All members of SAB acknowledged the difficulties that the pensions taxation system is causing for higher earners, and would support this being addressed in an appropriate way. However, the majority view of SAB is that this issue should not be dealt with through the member contribution structure.

After considering this advice, the department drew up possible contribution structures that addressed those factors and presented them to the SAB for feedback.

During summer 2021, we received final advice from the SAB which set out that trade union representatives were not able to express a preference between the options. Most trade union representatives remained highly concerned about the potential impact to members of changing the contribution structure from 1 April 2022, particularly when considering the interaction of these changes with other factors that have a bearing on members. Factors include short and medium term pay policy, the level of member contribution yield required, the completion of the 2016 valuation and cost cap assessment, the McCloud remedy, and the effect of pension taxation.

Employer representatives fully acknowledged the challenges that the timing presents, and understood the position of trade union representatives, but considered that certain changes are necessary to correct issues with the current structure.

The British Medical Association was not a signatory to the SAB advice but provided their views separately: retaining a tiered contribution model, particularly one with steep difference between the highest and lowest rates, is inappropriate where members are building up pension on a career average basis and therefore getting the same proportional benefit. Concerns were also expressed around the yield and called for a further flattening of the tiered contribution structure so that more members were paying closer to the 9.8% required.

The Department recognised that the Scheme Advisory Board were unable to reach agreement and recommend a preferred option due to the wide range of stakeholder views. Whilst this meant that a consensus option could not be put out to public consultation, the advice received from the SAB was taken into account in developing the proposed changes to member contribution rates.

In accordance with section 22(2)(a) of the 2013 Act, a public consultation was issued on 15 October 2021 and closed on 7 January 2022. 1031 responses were received from individuals, trade unions, employers and other organisations. 72% of respondents agreed that members' contribution rates should be determined by their actual rates of annual

pensionable pay and not their notional whole-time equivalent rate, whereas 17% did not agree and 11% either did not know or did not say if they agreed or disagreed.

35% of respondents agreed with the proposed member contribution structure, whereas 52% disagreed and 14% did not know or did not say if they agreed or disagreed. Percentages have been rounded to the nearest whole number so might not total 100% when rounded. The reasons for disagreeing with the proposal were varied, with many members saying that the increase in contributions for some members raised affordability concerns and that it was felt that higher earners were the main beneficiaries of reforming the member contribution structure. On the other hand, some respondents put forward that the decrease in contributions for higher earners did not go far enough, that the cross-subsidy between higher and lower earners remained too high or that everyone should pay the same amount (i.e. 9.8%). Whilst agreement was sought, given the opposite views expressed in consultation responses, it is clear that there isn't a proposal where all respondents would be able to agree.

67% of respondents agreed that the tier thresholds should be uplifted in line with any centrally agreed annual Agenda for Change pay awards. 22% disagreed and 11% either didn't know or didn't say whether they agreed or disagreed. 45% of respondents agreed with the phasing proposed by the consultation whereas 43% disagreed and 13% either didn't know or didn't say whether they agreed or disagreed. Generally, respondents who disagreed either wanted the changes brought in immediately or wanted them phased over a longer period of time. Whilst agreement was sought, given the opposite views expressed in consultation responses, it is clear that alternative options would not be able to lead to agreement due to the opposing views expressed by respondents.

## **Impact**

The proposed amending regulations means that many members will see the cost of accruing pension scheme benefits change on 1 October 2022. The changes were initially proposed to come into force on 1 April 2022, which is reflective of the fact that all members will be building up career average revalued earnings benefits from 1 April 2022. The number of members with valuable final salary benefits is also diminishing and therefore it is proportionate to change the way that contribution rates are determined and reduce cross-subsidy present in the current member contribution structure. However, when reviewing the impact that the changes would have on some members and taking on board feedback received during consultation, it was decided that the changes would be delayed until 1 October 2022.

Approximately 40% of members will see their rates reduced as a result of the new member contribution structure. However, around 57% of members will see their contribution rates increased and around 3% of members will see their rates remain the same. Of those

members that see their rates increase, the majority will still pay below the yield requirement of 9.8% and effectively receive a discount on membership of the NHS Pension Scheme. Around 40% of the NHS Pension Scheme membership work part-time, and it is estimated that 30% of the whole scheme membership would pay less in contributions as a result of moving to actual annual rates of pay.

The department has considered these regulations and had regard to the desirability of not making a change to the protected elements of a scheme under section 1 within the protected period. The department has also carefully considered the timing of these changes and has listened to concerns from consultation respondents that the proposals would be introduced at a time of significant wider economic challenge.

In recognition of this, the Department decided to delay the implementation of the new member contribution structure to 1 October 2022. This decision was taken to mitigate the impact on take-home pay for NHS staff in the short-term and give members and employers more notice of the changes that will come into effect in October. It also ensures the updated structure is introduced after the current Pay Review Body report is published.

The department has decided to lay these regulations in advance of 1 October 2022 in order to give members, employers and payroll providers sufficient time to prepare for and implement the changes. Making the regulations in advance provides increased certainty that the changes will come into force on 1 October 2022.

If these regulations were not made then the current member contribution structure would remain in place, which has been appropriate since 2015. Given that all members will be building up career average benefits from 1 April 2022, the department feels that it is important that the member contribution structure is reformed and better reflects the nature of career average accrual. If these regulations are not made then part-time members would still pay contributions based on their whole-time equivalent salary, which is believed to be undesirable in a career average pension scheme. Additionally, the cross-subsidy between high and low earners would be too great, with high earners paying nearly three times higher rates than lower earners, despite building up benefits at the same rate. However, some cross-subsidy is still appropriate in order to protect affordability for lower paid members and the new contribution structure retains some tiering to achieve that policy objective.

The consultation document and consultation response contained information setting out the impact on different types of members, including equality analysis on the proposals. Views were invited from respondents on any further equality considerations and these were taken into account when finalising the policy and associated regulations. The consultation document and consultation response can be found online at [NHS Pension Scheme: proposed changes to member contributions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/nhs-pension-scheme-proposed-changes-to-member-contributions)

There is no, or no significant, impact on business, charities or voluntary sector.

## **Conclusion**

Parliament is invited to note the changes to the member contribution structure and rates in the 2015 Regulations and why the department proposes to make these regulations, having regard to the desirability of not making a change to the protected elements of the NHS Pension Scheme within the protected period. The National Health Service Pension Schemes (Member Contributions etc.) (Amendment) Regulations 2022 will be made and laid in Parliament under the negative resolution procedure



