



Department
of Health

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

Consultation Document & Explanatory Notes

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Contents

Introduction	4
Changes to Pay/Earnings Bands for 2014/15 Scheme Year.....	5
Changes to Regulation D3 of the 1995 Section - Further contributions by employing authorities in respect of excessive pay increases.....	8
Lifetime Allowance Limit : Individual Protection 2014.....	9
Miscellaneous and Technical Amendments.....	11

Introduction & How to Respond

The Department of Health has published for consultation a draft Statutory Instrument titled: The National Health Service Pension Scheme (Amendment No. 2) 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 at Annex A. It is also available via the NHS Business Services 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: Changes to pay/earnings bands for the 2014/15 scheme year
- Section 2: Changes to 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
- Section 3: Accommodation of the HMRC Individual Protection 2014 facility
- Section 4: Miscellaneous and technical amendments

Comments on the proposed changes and on the draft Statutory Instrument itself (see Annex A) can be submitted via email to:

nhsregsapr14@dh.gsi.gov.uk

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The consultation will close on 28th May 2014.

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

Purpose of the Amendments

- 1.1 Member contribution rates in the NHS Pension Scheme are determined by reference to pensionable pay/earnings in a scheme year. An explanation of the way the contribution tables are used is provided at the end of this section.
- 1.2 These amendments implement revised 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 2014¹. The 1% increase required a small adjustment to the Agenda for Change (AfC) pay spine point 16, to ensure that those on pay spine point 15 receive the full 1% increase. This change must be reflected in the tables that are used to determine the level of member contributions payable. The amendments made will come into force in July 2014 and have retrospective effect from 1 April 2014.
- 1.3 The change to pay spine point 16 affects the level at which the top of the second, and the bottom of the third, tier of member contributions is set. Failing to reflect this change in the contributions tables would have led to some members moving up from the second to the third tier of contributions. These affected members would, as a result of a 1% pay increase, have had to pay an additional 1.5% in pension contributions due to the move from tier 2 (5.6% contribution rate) to tier 3 (7.1% contribution rate).
- 1.4 These amendments are therefore wholly beneficial as they increase the threshold of pensionable pay/earnings required to determine the level of member contributions payable in the second tier of contributions. 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.

Revised Tables

Officer Members

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

Table 1

Scheme Year 2014-2015

<i>Column 1</i> <i>Pensionable Pay band</i>	<i>Column 2</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% ¹ .

¹ <http://www.nhsemployers.org/Aboutus/Publications/Documents/Pay-Conditions-Circular-AforC-1-2014.pdf>

Table 2**Scheme Year 2014-2015**

<i>Column 1</i> <i>Pensionable Pay band</i>	<i>Column 2</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

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

Table 1**Scheme Year 2013-2014**

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</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%
£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**

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</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%".

1.7 Individual regulations affected in the draft 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).

Background note – how the tables are used

1.8 Pay Bands – tiered contribution rates for members who are officers

Group 1 – officers who are employed by the same employer at the end of the last scheme year and the beginning of the current scheme year

These members have their contribution rate set by comparing the officer's pensionable pay during the last scheme year with the pay bands for that year. For the current scheme year, pay and pay bands for 2013/14 are used to set the rate for 2014/15, as show in table 1 at paragraph 1.5 above (implemented by S.I. 2014 No. 570).

Group 2 – officers who start a new job in the current scheme year or whose rate of pay for an existing job changes (except if unplanned or unlikely to last for 12 months or more) after 1 April in the current scheme year

These members have their contribution rate set by calculating an annual pay figure for the current scheme year and comparing that amount to the uprated pay bands that apply from 1 April in that current scheme year. Pay and pay bands for 2014/15 are used to set the rate for the 2014/15 scheme year (the Table 2 in paragraph 1.5 above).

1.9 Earnings Bands – tiered contribution rates for members who are General Practitioner (GP) or non-GP Providers

The arrangements for GP and non-GP Provider members are different because their earnings can vary significantly from year to year; and may only be finalised following completion of their tax return some time after the end of the scheme year. Pensionable earnings and contributions rates are set retrospectively and so the separate approach used for existing and new-to-post officer members is unnecessary.

This means that the tiered rates for practitioner and non-GP Provider members in any year are first set on a provisional basis, using a 'best estimate' of expected earnings and the latest contribution table available. The estimate can be based on finalised earnings and the relevant earnings bands for an earlier year, or an estimate of future earnings and the earnings bands for the current year.

Once the GP or non-GP Provider's actual earnings for the scheme year are known, final tiering is set and, if necessary, the contributions made on a provisional basis are adjusted.

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

- 2.1 UK Statutory Instrument 2014 No. 570 introduced, amongst other amendments, new regulation D3 to the NHS Pension Scheme 1995 section regulations. This followed a period of consultation, and consideration of issues raised during that consultation². 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 prices index plus 4.5%.
- 2.2 Further representations from NHS employers and stakeholders were received after publication of the consultation response document, and after the laying of the finalised statutory instrument. These further representations have been carefully considered and reflected upon, resulting in a limited amendment to regulation D3 which is intended to have retrospective effect from 1 April 2014.
- 2.3 Regulation D3 already disregards a pay increase made for any reason before 1 April 2014. The amendment to regulation D3 that is proposed 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.
- 2.4 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.
- 2.5 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.
- 2.6 Amendment regulation 4 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.

² <https://www.gov.uk/government/consultations/amendments-to-nhs-pension-scheme-regulations>

3. Lifetime Allowance Limit: Individual Protection 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 the Individual Protection 2014 facility for individuals who would be affected by the new lower limit.
- 3.3 '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.
- 3.4 Further details about the LTA and Individual Protection 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.

Detailed changes

- 3.6 Amendment regulations 5 and 8 accommodate this new protection facility within scheme regulations in a way that is consistent with the handling of other existing LTA protections.
- 3.7 Paragraph (8) of 1995 section regulation T2A is amended and new paragraph (8B) added with the effect that members who wish to rely on 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 amendment is made to 2008 section regulation 1.B.3 with new paragraph (3B) added.

- 3.8 References to paragraph (8B) are inserted into T2A(9) and (10) 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.
- 3.9 The amendments made by the statutory instrument will come into force in July 2014 and have retrospective effect from 6 April 2014.

4. Miscellaneous & Technical Amendments

- 4.1 The draft regulations also make some miscellaneous and minor technical corrections.
- 4.2 Amending regulation 4(2) corrects “Amount C” to “Amount D” at Step 6(a) of regulation D3(6).
- 4.3 Amending regulation 6(3) corrects the wording of sub-paragraph (12) of paragraph 23 (accounts and actuarial reports) of Schedule 2 to the 1995 Regulations.
- 4.4 Amending regulation 11 inserts a missing cross-reference “2.C.6”, corrects “employee” to “employees”, and deletes the unnecessary word “an” in the places indicated.