

BMA response – Consultation on the NHS pension schemes, additional voluntary contributions and injury benefits (amendment) regulations

BMA Policy directorate

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About the BMA

The BMA is the doctor's trade union and professional organisation established to look after the professional and personal needs of our members. The BMA represents over half of practising UK doctors in all branches of medicine all over the UK.

Most BMA members are members of the NHS Pension Schemes. This is a response from the BMA to the Consultation on the draft Statutory Instrument entitled The National Health Service Pension Schemes, Additional Voluntary Contributions and Injury Benefits (Amendment) Regulations 2019.

Member contribution rates

We are extremely disappointed that there has been no change to employee contribution rates which, as things stand, are to remain at the previous level with a contribution of 14.5% for the highest earners. This is despite the NHS pension Scheme Advisory Board reaching the consensus view that the regulations require to deal with the cost floor breach highlighted in the latest scheme valuation. That consensus view included the removal of the top two tiers. A response from the Secretary of State was expected at the end of November 2018 but at the time of writing is still not forthcoming.

GAD estimate that 84% of NHSPS members are now accruing benefits solely on a CARE basis and by 2023 it will be over 95%. There is no justification for anything like the significant differences in contribution rates that are currently in place.

Given all employees are 'purchasing' a fixed percentage of earnings as future pensionable income, contribution rates should be equalised. We have previously made a concession that this could be after tax relief and that a small differential between top and bottom earners may have some weak evidence¹. Therefore, the BMA would accept a system which was equalised after tax relief but adjusted to reflect the ONS data (however, we are concerned that a position be taken based on one demographic factor which ignores the many others that can affect longevity). This would also meet the suggestion by DHSC that the scheme be made more affordable for the lower paid and new starters. It is worth remembering that the BMA has tens of thousands of junior doctors who meet both criteria.

Many BMA members in the top tiers saw contribution increases of 6% between 2012-14 at a time of either nil or below inflation pay rises. This situation is no longer justifiable and must be addressed immediately to prevent further departures of senior medical staff from the NHS.

It has been suggested that the fact that some members have legacy final salary benefits with a salary link is a justification for higher rates of contributions for higher earners.

We completely reject this suggestion. Those benefits were paid for during the period of accrual by members who were never asked if they wanted to maintain a salary link (and which continues to impact on their annual and lifetime allowance).

¹ GAD previously provided an estimate from ONS data that would support a 1.3% differential in contribution rate between the top and bottom contribution tiers

With the recognised pressures on our members resulting from the application of pension taxation rules the removal of the higher tiers would have brought some relief and helped stem the flow of high earners opting out. As highlighted above this should only have been an initial step towards a much flatter contribution structure overall.

As most members are now in the 2015 Career Average Revalued Earnings Scheme, where benefits for members are calculated in the same way irrespective of whether they are practitioners or 'officers' and where they are based on each years' pensionable earnings, we had expected a move from Whole Time Equivalent assessment for officers to actual income.

Employer contribution rate

The impact of the reduction in the Superannuation Contributions Adjusted for Past Experience (SCAPE) rate on employers will be significant as this is proposed to result in an increased employer contribution of 20.68% (including the administration charge).

The pressures this will place on General Practice will be significant. Full funding will be required to support GP employers and thus we welcome the Government's commitment to provide additional funding for this alongside the longer-term NHS funding plans.

Our members currently pay a significant amount in pension contributions. The impact of the Annual Allowance has forced some to reconsider both the value of NHS Pension Scheme membership and what level of additional workload they take on within the NHS. This additional cost increase which will impact on GP employers may yet exacerbate the opt out problem.

Entitlement for survivors of civil partners and same-sex spouses

We welcome the changes brought about following the Walker v Innospec Supreme Court decision in favour of same sex partners. However, as this now leaves widowers of 1995 section members as the only group who remain detrimentally discriminated against in respect of dependant benefits we urge the Government to complete its ongoing review into this swiftly.

We also look forward to hearing of the proposed mechanism to refund members in same sex partnerships who made purchases to increase these benefits or whose lump sums at retirement were reduced and would like involvement in agreeing a joint communication programme to ensure that all those affected are made aware of these changes.

Exempting Agenda for Change pay increases from Final Pay Control charges

Whilst not directly affecting our members we agree that those caught out by the final pay control rules unintentionally should be removed from its remit.

We ask that consideration be given to other groups who are inadvertently brought under the scope of this rule. One example is those who are non-GP partners in General Practice and whose income is based on profit share. Such members who are in the 1995 section are subject to increases in pay which cannot be predicted and are based on their agreed share of the profits. Applying the final pay control rules to GP partners in circumstances such as this,

where pay increases are out of their control, is unfair, damaging and can affect the sustainability of a practice.

Consultants are often asked to take on senior leadership or management roles towards the end of their career. The increase in remuneration and pension could fall into the realms of Final Pay Controls. The loss of pension benefits as well as other taxation will not encourage consultants to step forward and fill these vital NHS roles and we would like to receive an assurance that final pay controls will not be applied to consultants in this position.

Scheme contributions

Having long challenged the previous application of annualising we are content to see the regulations on annualising of practitioner income in the 2015 scheme have now been amended to reflect the practice which we believe should have applied since its inception regarding “add then annualise”.

We dispute the statement in paragraph 7.40 of the consultation guidance that the correct annualising principles have been applied in practice by the scheme administrator and thus no member has been disadvantaged. Whilst this may be the case very specifically in the construct of the service in the scheme year (rather than from the start of a GP’s service in the scheme year) all other aspects of annualising have been administered in differing ways and it has been recognised by the scheme administrators that previous interpretations of the annualising rules have had perverse consequences which have negatively affected some members.

We recognise that the regulations now seek to reflect the original intention of the annualising rules, but we continue to remain opposed to annualising in principle. Annualising only applies to those GPs who are in the 2015 scheme and it discriminates particularly against GP locums who as a group are less likely to be in the scheme for a full year. Many GP locums are from groups who have legally protected characteristics (ethnic minorities, women, and those with disabilities) and who are more likely to take breaks. For this reason, we consider that for as long as the practice of annualising remains, the 3-month concession rule for exclusive GP locums must also be retained to prevent this group from being disproportionately negatively impacted by annualising.

We are opposed to paragraph 7.41 of the consultation as it will abolish the 3-month rule. This will lead to any annual leave, study leave, sick leave or even a weekend resulting in a locum being annualised. A locum that does not work weekends will automatically be annualised by 260/365.

Forfeiture

We oppose the proposal to give the Secretary of State the power to suspend a person’s pension benefits before they have been proved guilty of committing a crime. This risks unfairly subjecting innocent members to hardship. We believe that the proposed new power is neither necessary nor proportionate and should be abandoned. Alternatively, such a power should be limited either by reference to the length of time of the suspension (having regard to the potential length of criminal proceedings) or by reference to the amount of benefits that may be suspended (having regard to the risk of hardship).